

8595
No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation,
Claimant of the Motor Tanker
"URANIA," Her Engines, Tackle, Apparel,
Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-
partners doing business under the name and
style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume I
(Pages 1 to 438)

Appeal from the United States District Court
Western District of Washington,
Northern Division.

FILED

JAN 4 - 1950

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAME AND ADDRESSES OF ATTORNEYS

MERRITT, SUMMERS & BUCEY,

LANE SUMMERS,

CHARLES B. HOWARD,

Proctors for Claimant and Cross-Libelant.

Central Building,

Seattle, Washington.

TODD, HOKANSON & WHITE,

RUSSELL V. HOKANSON,

RICHARD S. WHITE,

Proctors for Libelants and Cross-Respondents.

682 Dexter Horton Building,

Seattle, Washington.

In the District Court of the United States for the
Western District of Washington, Northern
Division

In Admiralty No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Libelants,

vs.

THE MOTOR TANKER "URANIA," her en-
gines, tackle, apparel, furniture, and equipment,
Respondent.

LIBEL

To the Honorable Judges of the Above Entitled
Court:

The libel of the above named libelants against
the above named respondent and against all persons
intervening for their interest therein in a cause of
contract civil and maritime, alleges:

I.

That at all times herein mentioned, the libelants,
E. A. Black and J. J. Featherstone, were and now
are co-partners doing business under the assumed
name and style of Commercial Ship Repair, with
an office and place of business in the Port of Wins-
low, State of Washington.

II.

That the respondent motor tanker Urania is now

lying afloat in the navigable waters of Puget Sound and within the jurisdiction of this Honorable Court.

III.

On information and belief, that at all times herein mentioned, Compania Navier Limitada Panama, a corporation organized and existing under the laws of the Republic of Panama, was and now is the owner of said vessel.

IV.

That between August 1st, 1948 and October 12th, 1948, the libelants furnished to said motor tanker Urania at the instance and request of the Master and owner of said vessel, material, labor and services for the repair, alteration and renewal of said vessel of the reasonable and agreed value of \$89,366.75.

V.

That of the aforesaid sum *their* remains a balance now due and owing in the sum of \$64,366.75, no part of which has been paid, although demand has been made therefor.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said motor tanker Urania, her engines, tackle, apparel, furniture, and

equipment; and that persons claiming any right, title or interest in said vessel may be cited to appear and answer upon oath all and singular the matters aforesaid, and that said vessel may be condemned and sold to pay the amount due to libelants, with interest and costs, and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

LANGLIE & TODD,
/s/ THOMAS TODD,
Proctors for Libelants.

[Endorsed]: Filed Oct. 13, 1948.

United States of America,
Western District of Washington—ss.

Thomas Todd, being first duly sworn, upon oath deposes and says: That he is one of the proctors for libelants in the above action and that he makes this verification for and on behalf of said libelants, being authorized so to do; that he has read the within and foregoing libel, knows the contents thereof and believes the same to be true.

/s/ THOMAS TODD.

Subscribed and Sworn to before me this 13th day of October, 1948.

[Seal] /s/ G. L. FLYNN,
Notary Public in and for the State of Washington,
residing in Seattle.

[Title of District Court and Cause.]

STIPULATION FOR COSTS

Know All Men By These Presents:

That the undersigned principals and the undersigned surety are held and firmly bound unto the United States of America in the penal sum of Two Hundred Fifty Dollars (\$250.00) lawful money of the United States, for the payment thereof to the benefit of whom it may concern; the said principals and the said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of October, 1948.

The conditions of this obligation are such that

Whereas, the above bounden principals are filing in this court and cause their libel against the respondent, The Motor Tanker Urania, her engines, tackle, apparel, furniture, and equipment,

Now, Therefore, if the above bounden principals shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or by any interlocutory order in the progress of the suit, or on appeal by any appellate court, then

this obligation to be void, otherwise to remain in full force and effect.

E. A. BLACK and
J. J. FEATHERSTONE,

Co-partners, doing business under the assumed name
and style of Commercial Ship Repair,

By LANGLIE & TODD,
/s/ THOMAS TODD,

Its Proctors.

Principals.

FIREMAN'S FUND
INDEMNITY COMPANY,

[Seal] By /s/ W. S. BEEKS,

Its Attorney-in-Fact.

Surety.

[Endorsed: Filed Oct. 13, 1948.]

AFFIDAVIT OF PUBLICATION

State of Washington,
County of King—ss.

M. E. Brown, being first duly sworn, on oath deposes and says that he is the business manager and one of the publishers of The Daily Journal of Commerce, a daily newspaper. That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now

and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of said King County.

That the annexed is a true copy of Notice of U. S. Marshal, as it was published in the regular issue (and not in supplement form) of said newspaper on the 15th day of October, 1948, and that said newspaper was regularly distributed to its subscribers during all of said period.

/s/ M. E. BROWN.

Subscribed and sworn to before me this 15th day of October, 1948.

[Seal] /s/ MARILYN BOORAS,
Notary Public in and for the State of Washington,
residing at Seattle.

NOTICE

Whereas, on the 13th day of October, 1948, E. A. Black and J. J. Featherstone, co-partners doing business under the assumed name and style of Commercial Ship Repair, Libelants, by Langlie & Todd, of Seattle, Washington, Proctors for Libelant, filed a libel in the District Court of the United States for the Western District of Washington, against the Motor Tanker "Urania," her engines, tackle, apparel, furniture and equipment in a cause of action civil and maritime, numbered 15266, for material, labor and services for repair of vessel in the sum

of \$64,366.75. And whereas, by virtue of process in due form of law, to me directed, I have attached and retain the same in my custody. Notice is hereby given to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said court, to be held at Seattle, in the Western District of Washington, on the 2nd day of November, A.D. 1948, at ten o'clock in the forenoon of the same day, if that day shall be a day of Jurisdiction, otherwise on the next day of Jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. J. S. Denise, United States Marshal. (5603-M)

[Endorsed]: Filed Oct. 15, 1948.

[Title of District Court and Cause.]

CLAIM OF OWNERSHIP

Compania Naviera Limitada, of Panama, a corporation, as sole owner of the Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, intervening for its interest as such owner, appears before the above entitled Court and claims said respondent vessel. and prays that it be permitted to defend accordingly. and that said Court

will decree restitution thereof and otherwise administer right and justice in the premises.

COMPANIA NAVIERA
LIMITADA, OF PANAMA,
a corporation,

By /s/ ANDREAS BEIS,
Its Agent, and Master of Respondent Motor Tanker
“Urania.”

Copy received Oct. 15, 1948.

United States of America,
State of Washington,
County of King—ss.

Andreas Beis, being first duly sworn, upon oath deposes and says:

That he is the Master of the Motor Tanker “Urania” and as such authorized to make the foregoing Claim of Ownership to said vessel in behalf of her owner, Compania Naviera Limitada, of Panama, a corporation, which at all times material was, and now is, the true and bona fide owner of said respondent Motor Tanker “Urania,” her engines, tackle, apparel, furniture and equipment, and as such owner entitled to the sole possession thereof.

/s/ ANDREAS BEIS.

Subscribed and sworn to before me this 15th day of October, 1948.

/s/ LANE SUMMERS,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Oct. 16, 1948.

[Title of District Court and Cause.]

RELEASE AND COST BOND

Know All Persons By These Presents:

That we, Compania Naviera Limitada, of Panama, a corporation, as Principal, and National Surety Corporation, a corporation authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto the United States Marshal of the above entitled district, for the use and benefit of whom it may concern, in the full sum of Eighty Thousand Dollars (\$80,000.00), to be paid to such Marshal or his successor, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and delivered this 15th day of October, 1948.

Whereas, libel in the above entitled cause has heretofore been filed in the above entitled court by libelants above named against the respondent vessel above named, for reasons in said libel alleged;

Whereas, said respondent vessel now lies seized and attached in the custody of said Marshal by virtue of process in rem issued upon said libel; and

Whereas, said Principal is filing in the above entitled cause its Claim of Ownership to said respondent vessel, and is applying for release thereof in accordance with the admiralty rules and practice of the above entitled Court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide by and answer final decree in the above entitled cause, and pay the money awarded thereby, (however, not exceeding said sum) and also shall pay all costs and expenses which shall be awarded by final decree of said Court or by any interlocutory order in the progress of said cause, or by any appellate court in case of appeal, then this obligation shall be void; otherwise it shall continue in full effect.

COMPANIA NAVIERA
LIMITADA, OF PANAMA,
a corporation,

By /s/ ANDREAS BEIS,
Its Agent, and Master of Respondent Motor Tanker
“Urania.”

Principal.
NATIONAL SURETY
CORPORATION,
By /s/ R. E. MOLONEY,
Its Attorney-in-Fact.
Surety.

The foregoing bond is hereby approved, and consent is hereby given that the vessel be released forthwith.

LANGLIE & TODD,
Proctors for Libelants.

[Endorsed]: Filed Oct. 18, 1948.

District Court of the United States
Western District of Washington

No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, d/b/a Commercial Ship Repair,
Libelants,

vs.

MOTOR TANKER "URANIA," etc.,
Respondent.

MONITION AND ATTACHMENT

The President of the United States of America
To the Marshal of the United States for the Western
District of Washington, Greeting:

Whereas, a Libel hath been filed in the United States District Court for the Western District of Washington, on the 13th day of October, in the year of our Lord one thousand nine hundred and 48, by E. A. Black and J. J. Featherstone, co-partners, doing business under the assumed name and style of Commercial Ship Repair, Libelants, vs. The Motor Tanker "Urania," her engines, tackle, apparel, furniture, and equipment, Respondent for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf be made, and that all persons interested in the said Motor Tanker "Urania" or vessel, her tackle, etc., may be cited in general and special to answer the premises, and

all proceedings being had that the said Motor Tanker "Urania" or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libellant.

You Are Hereby Commanded to attach the said Motor Tanker "Urania" or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held at Seattle, in the Western District of Washington, on the 2nd day of November, A.D. 1948, at 10 o'clock in the forenoon of the same day, if that day shall be a day of Jurisdiction, otherwise on the next day of Jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness, the Hon. John C. Bowen, Judge of said Court, at the City of Seattle, in the Western District of Washington, this 13th day of October in the year of our Lord one thousand nine hundred and forty-eight and of our independence the one hundred and seventy-third.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Deputy Clerk.

Material, labor, and services for repair of vessel,
\$64,366.75.

LANGLIE & TODD.

Proctors for Libellant.

MARSHAL'S RETURN

I hereby certify and return that in obedience to the attached Monition and Attachment I attached the therein described Motor Tanker "Urania," her engines, tackle, apparel, furniture and equipment on October 13, 1948 at Winslow, Washington and have the same in my custody. I have given due notice to all persons claiming the same, or knowing or having anything to say why same should not be condemned and sold pursuant to the prayer of the Libel, that they be and appear before this Court to be held at Seattle in the Western District of Washington on the 2nd day of November, 1948, by causing a Notice to be published in The Daily Journal of Commerce, Seattle, Washington, and posting like Notice on the seized Motor Tanker "Urania."

A copy of the Monition and Attachment, together with copy of Libel was served on Andreas Beis, Skipper of the Motor Tanker "Urania."

J. S. DENISE.

United States Marshal.

By /s/ EDWARD C. SCULLY,
Deputy.

[Endorsed]: Filed Oct. 19, 1948.

[Title of District Court and Cause.]

ANSWER

The Answer of claimant above named to libel of libelants above named in the above entitled cause of contract, civil and maritime, admits and denies as follows:

I.

As to Article I, the claimant admits the allegations thereof.

II.

As to Article II, the claimant admits the allegations thereof.

III.

As to Article III, the claimant admits that it is the owner of the respondent vessel, and that it is a corporation of the Republic of Panama.

IV.

As to Article IV, the claimant admits that between the 1st of August and the 12th of October, in 1948, libelants furnished to the respondent vessel, at the instance of the master and/or the owner, certain labor and materials for repair or alteration thereof; but the claimant denies that such labor and materials were of the reasonable and agreed value of \$89,366.75, the actual value being in an amount substantially less, to be determined by proofs in the above entitled cause.

V.

As to Article V, the claimant denies that a balance in the sum of \$64,366.75 is due and owing to the libelants, but admits that no part of said sum has been paid by the claimant.

VI.

As to Article VI, the claimant denies the allegations thereof, excepting only the jurisdictional allegation.

Wherefore, having fully answered, the claimant prays that said libel be dismissed with costs, and that pending the above entitled cause the claimant have such interim relief as may be just and proper.

MERRITT, SUMMERS &
BUCEY,

/s/ LANE SUMMERS,

Proctors for Claimant.

[Endorsed]: Filed Nov. 16, 1948.

United States of America,

State of Washington,

County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is a member of the firm of Merritt, Summers & Bucey and as such one of the proctors of record for claimant above named, which is a for-

eign corporation having no officer or agent within the jurisdiction of the above entitled court. That he has prepared the foregoing Answer on information and belief; that he is authorized to verify said Answer in behalf of said claimant; that he has read the same, knows the contents thereof, and believes the same to be true.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 15th day of November, 1948.

[Seal] /s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

In the District Court of the United States for the
Western District of Washington, Northern
Division

In Admiralty No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Libelants,

vs.

THE MOTOR TANKER "URANIA," her engines,
tackle, apparel, furniture and equipment,
Respondent,

COMPANIA NAVIERA LIMITADA,
a corporation,

Claimant.

COMPANIA NAVIERA LIMITADA,
a corporation,

Cross-Libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Cross-Respondents.

CROSS-LIBEL

The cross-libel of Compania Naviera Limitada, a
corporation, cross-libelant above named, against E.
A. Black and J. J. Featherstone, doing business
under the firm name of Commercial Ship Repair,

cross-respondents above named, in a cause of repairs and damages, civil and maritime, alleges:

I.

That cross-libelant Compania Naviera Limitada at all times material was and is a Panamanian corporation, and the owner of the motor tanker "Urania."

II.

That according to cross-libelant's information and belief, cross-respondents E. A. Black and J. J. Featherstone at all times material were and are co-partners, doing business under the firm name of Commercial Ship Repair, with a yard at or near Winslow, Washington.

III.

That during the period beginning on or about the 1st of August and ending on or about the 14th of October, in 1948, the "Urania" was at the yard of cross-respondents, under agreement for faithful performance by them of certain repairs, renewals, alterations and additions, to be completed in the period of eighteen working days. That cross-respondents failed in such performance by unreasonably consuming extended time and by negligently furnishing to the "Urania" inefficient services, unreliable labor, and defective materials, with consequences as follows: (a) certain tools belonging to the vessel were taken therefrom and not returned thereto; (b) work and materials as specified were not supplied; (c) the departure of the vessel from said yard was unduly delayed; (d) the first voyage

of the vessel after such departure was interrupted by breakdowns, necessitating deviation and towage to port of refuge; (e) further and corrective repairs were required by the vessel; (f) additional loss of time was incurred by the vessel.

IV.

That in continued consequence of said malperformance by cross-respondents of their obligations to cross-libelant respecting such repairs, renewals, alterations and additions on the vessel, cross-libelant has been subjected to losses and expenses which have not been definitely ascertained as to exact amount, but have been presently estimated as follows:

- | | | |
|-----|--|-----------|
| (1) | Repairs to Clayton boiler and generator at Long Beach..... | \$ 678.86 |
| (2) | Removal of ammunition bulkhead not effected | 275.00 |
| (3) | Expense incurred during delay at Winslow, Washington, (16 days at \$246 per day)..... | 3936.00 |
| (4) | Loss of profits during delay at Winslow, Washington, (16 days at \$250 per day) | 4000.00 |
| (5) | Telemotor repairs at Port Angeles, Washington, (including 2 men, one surveyor, and air transportation).... | 262.51 |
| (6) | Deviation to Port Angeles, Washington, for telemotor repairs..... | 310.00 |
| (7) | Towage after breakdown from Manzanillo, Mexico, to San Pedro, California | 4286.00 |

(8)	Engine repairs at Long Beach, California	4475.00
(9)	Miscellaneous corrective repairs at Long Beach, California.....	3214.00
(10)	Corrective cleaning of tanks at Long Beach, California	2157.00
		CBH
(11)	Additional fuel consumed on account of deviation and delay for repairs, and resupplied at San Pedro, California.	974.00
(12)	Disbursements (agency) at Manzanillo	969.00
(13)	Disbursements (agency) at Los Angeles	1911.00
(14)	Expenses of vessel during repairs at Long Beach, California	7252.00
(15)	Loss of profits during corrective repairs (28 days at \$250 per day)....	7000.00

V.

That likewise in continued consequence of said malperformance by cross-respondents, damages in
 Illegible initial \$39,543.37 C.B.H.
 the presently estimated total of \$41,389.51 have
 been suffered by cross-libelant, for which it is entitled to reimbursement from the cross-respondents.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the above entitled court.

Wherefore, cross-libelant prays:

(1) That process in due form of law according

to the rules and practice in cases of admiralty and maritime jurisdiction issue against said cross-respondents in personam, requiring them, and each of them, to appear and answer the foregoing cross-libel;

(2) That cross-libelant having been required to furnish security to release the respondent motor tanker "Urania" from process in rem issued upon the original libel in the above entitled cause filed by cross-respondents as libelants, they be required to furnish security as contemplated by Admiralty Rule 50 in the sum of \$52,000.00;

(3) That until such security shall have been so furnished, all proceedings upon the original libel in the above entitled cause be stayed;

(4) That by decree of the above entitled court judgment be granted against cross-respondents and in favor of cross-libelant for its damages as proved, together with interest thereon and costs to be taxed;

(5) That cross-libelant have such other and additional relief as may seem to the Court just and proper.

MERRITT, SUMMERS &
BUCEY.

/s/ LANE SUMMERS,

Proctors for Cross-libelant.

United States of America.

State of Washington, County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is an attorney at law and a member of

the firm of Merritt, Summers & Bucey, and as such one of the proctors of record for cross-libelant above named, a foreign corporation; that on information supplied and authority granted by said cross-libelant he has prepared the foregoing cross-libel, the contents of which he has read and believes to be true.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 26th day of January, 1949.

[Seal] /s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Jan. 26, 1949.

[Title of District Court and Cause.]

INTERROGATORIES OF
LIBELANTS-CROSS-RESPONDENTS

Come now the Libelants-Cross-respondents above named and, without waiving their exceptions to the cross-libel on file herein, propound the following interrogatories to be answered under oath by Claimant-Cross-libelant corporation, in accordance with the rules and practices in admiralty, by any officer thereof competent to testify in its behalf:

INTERROGATORY No. 1

Was Demitri Antippas an officer and/or director of Compania Naviera Limitada between August 1, 1948, and October 15, 1948?

INTERROGATORY No. 2

If the answer to Interrogatory No. 1 is "yes," state what office or offices he held.

INTERROGATORY No. 3

State whether at any time between August 1, 1948, and October 13, 1948, Harry F. Williams was employed by claimant corporation to represent it in connection with the repair and/or alteration and/or renewal of the motor tanker "Urania."

INTERROGATORY No. 4

Referring to Article III of the cross-libel filed herein, was the agreement that the work would be completed in a period of 18 working days oral or written?

(a) If the agreement was oral, give the date, place and names of the persons who made the agreement.

(b) If the agreement was written, give the date of the instrument and the names of the persons by whom the same was signed.

(c) What were the commencement and completion dates provided for under the terms of the alleged agreement?

INTERROGATORY No. 5

Referring to Article III of the cross-libel, state what extension or extensions of time were granted to cross-respondents, giving dates on which exten-

sion or extensions were granted, and dates covered by said extension or extensions of time.

(a) Were the extension or extensions of time made orally or in writing?

(b) If oral, state the names of the persons between whom the agreement was made.

(c) If in writing, state the names of the persons signing said writing.

INTERROGATORY No. 6

Referring to Article III of the cross-libel, what services furnished to the "Urania" by cross-respondents were inefficient?

(a) In what respect were such services inefficient?

INTERROGATORY No. 7

Referring to Article III of the cross-libel, what labor furnished by cross-respondents to the "Urania" was unreliable?

(a) In what respect was such labor unreliable?

INTERROGATORY No. 8

Referring to Article III of the cross-libel, what materials furnished by cross-respondents to the "Urania" were defective?

(a) In what respect were such materials defective?

INTERROGATORY No. 9

Referring to Article IV, sub-paragraph (1), of the cross-libel, what tools were taken from the vessel and not returned thereto?

- (a) Who took said tools from the vessel?
- (b) What were the circumstances of the removal of the tools?

INTERROGATORY No. 10

Referring to sub-paragraph (3) of Article IV of the cross-libel, state the commencing and terminating dates of the alleged 16-day delay for which damages by way of expenses are sought.

- (a) Itemize all expenses incurred by reason of the alleged 16-day delay.
- (b) To whom did cross-libelant become obligated for each of the expenses itemized?

INTERROGATORY No. 11

Referring to sub-paragraph (4) of Article IV of the cross-libel, state the basis on which the alleged loss of profits is calculated.

- (a) If the said loss of profits is based in whole or in part on contract, or offer of contract, state whether such contract, or offer of contract, is oral or written.
- (b) If oral, state the names of the parties to the agreement, when and where the same was made, and the date for the commencement of performance and expected completion thereof.
- (c) If written, the date of and the names of the parties to such agreement, and the date for the commencement of performance and expected completion thereof.

INTERROGATORY No. 12

Referring to sub-paragraph (5) of Article IV of the cross-libel:

(a) Describe the defects in the telemotor requiring repairs.

(b) What repairs were made to the same?

(c) By whom were the repairs made?

(d) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated repairs to the telemotor.

INTERROGATORY No. 13

Referring to sub-paragraph (6) of Article IV of cross-libel, what items do the alleged damages for deviation include?

INTERROGATORY No. 14

Referring to Article IV of cross-libel, state the scheduled ports of call of "Urania" after departure from Puget Sound.

(a) State the purpose of putting in at each scheduled port of call and the scheduled time of arrival thereat and departure therefrom.

(b) State what cargoes the "Urania" was scheduled to carry, the ports at which each such cargo was to be loaded and the ports at which such cargoes were to be delivered.

(c) At what port or ports, if any, did the

“Urania” call after October 15, 1948, and prior to the alleged breakdown at or near Manzanillo, Mexico?

INTERROGATORY No. 15

Referring to sub-paragraph (7) of Article IV of cross-libel:

(a) State the date of the breakdown at Manzanillo, Mexico.

(b) Describe the defect or defects which caused the vessel to break down.

(c) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel caused the breakdown of the “Urania” at or near Manzanillo.

(d) State whether the “Urania” was able to proceed under her own power after breakdown.

(e) State whether breakdown occurred in port or at sea, and if at sea, the vessel’s position when breakdown occurred.

(f) State the name of the vessel or vessels which towed “Urania” from Manzanillo to San Pedro.

(g) State date of departure from Manzanillo and date of arrival at San Pedro.

INTERROGATORY No. 16

Referring to sub-paragraph (8) of Article IV of cross-libel:

(a) State what engine or engines were repaired.

(b) State the parts thereof which were repaired.

(c) State the parts thereof which were replaced, if any.

(d) Describe the defects in the engine or engines which required such repairs or replacements.

(e) State how much time was actually consumed in effecting such repairs.

(f) Give the commencement date and completion date of the engine repair work.

(g) State who made the engine repairs to the vessel at Long Beach, California, giving the name of the company or individuals who effected the same.

(h) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated engine repairs to be made.

(i) Was a survey report made to claimant-cross-libelant corporation by the American Bureau of Shipping covering engine repairs at Long Beach, California?

(j) Was a survey report made to claimant-cross-libelant corporation by any underwriters covering engine repairs at Long Beach, California, and, if so, by whom?

INTERROGATORY No. 17

Referring to sub-paragraph (9) of Article IV of the cross-libel:

(a) State what "miscellaneous" corrective repairs were made to the vessel at Long Beach, California.

(b) State how much time was actually consumed in making said “miscellaneous” corrective repairs.

(c) Give the commencement and completion date of said “miscellaneous” corrective repairs.

(d) Who made the “miscellaneous” corrective repairs, giving the name of the company or individuals who effected the same.

(e) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated the “miscellaneous” corrective repairs.

INTERROGATORY No. 18

Referring to sub-paragraph (10) of Article IV of the cross-libel:

(a) State what tanks of the vessel were correctively cleaned at Long Beach, California, describing specifically the type and location of such tank or tanks on the vessel in each case.

(b) Who effected the cleaning of said tanks?

(c) What condition existed in the tank or tanks requiring the same to be correctively cleaned?

(d) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated the “corrective” cleaning of the tanks.

INTERROGATORY No. 19

Referring to sub-paragraph (11) of Article IV of the cross-libel:

(a) State how many extra miles were traveled by the vessel on account of the alleged deviation for repairs.

(b) How many gallons of fuel were consumed on account of such alleged deviation?

(c) Who furnished to the vessel the additional fuel alleged to have been resupplied at San Pedro?

INTERROGATORY No. 20

Referring to sub-paragraph (12) of Article IV of the cross-libel:

(a) Itemize the "agency" disbursements made at Manzanillo, giving the date or dates when each item was incurred.

(b) To whom were such disbursements made?

INTERROGATORY No. 21

Referring to sub-paragraph (13) of Article IV of the cross-libel:

(a) Itemize the "agency" disbursements made at Los Angeles, giving the date or dates when each item was incurred.

(b) To whom were the disbursements made at Los Angeles?

INTERROGATORY No. 22

Referring to sub-paragraph (14) of Article IV of the cross-libel:

(a) Itemize all expenses of vessel incurred during repairs at Long Beach.

(b) Give the dates between which expenses of the vessel were incurred at Long Beach.

(c) To whom did cross-libelant become obligated for each of the expenses itemized?

INTERROGATORY No. 23

Referring to sub-paragraph (15) of Article IV of the cross-libel:

(a) State the basis on which the alleged loss of profits is calculated.

(b) If the said loss of profits is based in whole or in part on contract or offer of contract, state whether such contract or offer of contract is oral or written.

(c) If oral, state the names of the parties to the agreement, when and where the same was made, and the date for the commencement of performance and expected completion thereof.

(d) If written, the date of and the name of the parties to such agreement, and the date for the commencement of performance and expected completion thereof.

(e) State when the 28-day period alleged in sub-paragraph (15) began and when it terminated.

Respectfully submitted,

TODD, HOKANSON & WHITE,

By /s/ RUSSELL V. HOKANSON,

Proctors for Libelants-Cross-Respondents, Commercial Ship Repair.

Copy Received Feb. 5, 1949.

[Endorsed]: Filed Feb. 5, 1949.

[Title of District Court and Cause.]

ANSWERS OF CROSS-LIBELANT TO INTER-
ROGATORIES OF LIBELANTS-CROSS-
RESPONDENTS.

Comes now the cross-libelant, by and through its proctors of record, Merritt, Summers & Bucey, and for answer to the interrogatories of the libelants-cross-respondents, which were served on February 5, 1949, furnishes the following information:

Interrogatory No. 1: Yes.

Interrogatory No. 2: Member of the Board of Directors.

Interrogatory No. 3: Yes.

Interrogatory No. 4: (a) Not applicable.

(b) The agreement was in writing, was dated August 4, 1948, and was signed "Commercial Ship Repair—E. A. Black, Co-owner."

(c) No dates were specified in the above instrument, but the vessel was actually delivered to the Winslow, Washington, yard of the Commercial Ship Repair at 1800 hours August 5, 1948.

Interrogatory No. 5: No extensions of time were granted to cross-respondents by cross-libelant.

Interrogatory No. 6: The performance of work by cross-respondents under contract specifications was done in such a manner that breakdown of the engines, malfunction of the machinery and equipment and correction of the various items enumerated in paragraph IV of the cross-libel proximately resulted, details of which will require extensive proof by cross-libelant at time of trial.

Interrogatory No. 7: See answer to Interrogatory No. 6.

Interrogatory No. 8: See answer to Interrogatory No. 6.

Interrogatory No. 9: The following tools were taken from the vessel and not returned:

6 hammers weighing from 1 lb. to 4 lbs.

1 hammer weighing 8 lbs.

4 screwdrivers ranging from 7" to 12"

6 chisels

1 chisel, cross

5 punches

1 scissor 6 inches

1 scissor 12 inches

1 pincer 6 inches

1 pincers 7 inches

1 pincer with isolation, 6 inches

2 keys for electric drilling

1 hand vice 6 inches

1 compass, 12 inches

2 pincers (superpliers)

1 box containing complete set of tools, key locked

5 box wrenches

3 open end wrenches $\frac{1}{4}$ -1 $\frac{1}{2}$

1 cope chisel

3 flash lights

8 gauges

2 knives

4 drills

(a) The exact identity of persons taking the tools is unknown.

(b) The tools were taken from the vessel while it was at Winslow, Washington, yard of Commercial Ship Repair and during the period of time when employees of the cross-respondents were working aboard the vessel.

Interrogatory No. 10: Original contract work on the vessel was not completed until October 15, 1948, although cross-respondents commenced this work on the vessel on August 6, 1948. A total time of 51 working days, or 33 days in excess of the contract period, elapsed between commencement and termination of original contract repairs, or a total of 33 days in excess of the agreed period for completion of repairs. Of the excess of 33 days cross-libelant has made an allowance of 17 working days for the performance of additional work not specified by the original contract. This leaves 16 working days over and above the agreed contract time of 18 working days, for which cross-libelant makes claim for damages.

(a) The estimate of daily expense of \$246.00 to the vessel as alleged in the libel has now been revised on the basis of actual experience and computations to an average daily expense of \$268.00, itemized as follows:

Monthly wages	\$4,176.01
Overtime—one month	602.20
Victualing—one month	921.60
Marine insurance—one month....	833.00
P. & I. insurance—one month....	100.00
Depreciation—equivalent of.....	835.00

Deck and engine stores, but not including bunkers.....	600.00
	<hr/>
	\$8,067.81

or an average of \$268.00 per day.

(b) To the persons enumerated in (a) above, for which supporting documents will be offered in evidence by cross-libelant at the time of trial.

Interrogatory No. 11: Loss of profits was calculated on the basis of actual experience in operation of the vessel.

(a) Written contract.

(b) Not applicable.

(c) Charter party dated December 13, 1948; Compania Naviera Limitada of Panama and the Coastwise Petroleum Company. Commencement date was December 15, 1948, and termination of contract December 24, 1948.

Interrogatory No. 12:

(a) The steering gear mechanism was oscillating from side to side as much as 60 degrees.

(b) A worn or partially broken wire, which caused the controller motor to hunt, was repaired.

(c) J. H. Woodside, a machinist, and Lester Short, an electrician from Commercial Ship Repair, performed the repairs, for which the vessel's agents were charged the sum of \$177.16 by cross-respondents.

(d) Failure to satisfactorily perform Item 26 of contract specifications, resulting in breakdown of telemotor mechanism within a few hours of depart-

ure from cross-respondents' Winslow, Washington, repair yard.

Interrogatory No. 13: Vessel's running expenses, fuel consumed and expenses for putting in at Port Angeles, totalling \$310.00.

Interrogatory No. 14: Upon departure Puget Sound vessel was en route in ballast to Cristobal, C. Z., subject to owner's orders as to further ports of call.

(a) Vessel had no scheduled ports of call on the West Coast United States or Central America, and in fact did not put in at any port prior to breakdown necessitating deviation to Manzanillo, Mexico.

(b) On initial voyage to Cristobal, C. Z., vessel was in ballast.

(c) None.

Interrogatory No. 15: (a) At sea, Lat. $18^{\circ} 15''$ north, Long. $104^{\circ} 24''$ west on October 26, 1948.

(b) Gear of vertical shaft thrust bearing and gear of vertical shaft drive on main engine galled.

(c) Terminals leading lube oil from special cylinder lubricator through cylinder and jacket water openings and into the rubbing surfaces of cylinders and liners were not tight. Heat exchangers dirty and leaking badly. Combination of above caused lube oil to emulcify and in turn caused gears to gall. Failure of cross-respondents to properly perform contract specifications and extra specifications on main engine work as will be shown in detail by evidence introduced at time of trial by cross-libellant.

(d) "Urania" proceeded under own power at reduced speed on reverse course toward Los Angeles until threat of complete breakdown caused master to again change course and make for nearest port, Manzanillo, where vessel arrived on October 28, 1948.

(e) See above. After temporary repairs were made at Manzanillo by service representative of main engine manufacturer who flew to Manzanillo, vessel departed under own power for Los Angeles to enable further repairs to be accomplished. Vessel sustained a complete breakdown at sea on November 5, 1948, necessitating request for salvage tug to assist "Urania" to port of Los Angeles.

(f) Tug "Pacific Retriever."

(g) Departed Manzanillo November 3, 1948. Arrived Los Angeles (San Pedro) November 11, 1948.

Interrogatory No. 16: (a) This item covers only repairs to main engine.

(b) Principal parts were replaced as shown below (c).

(c) Vertical shaft drive gear (2), vertical shaft lower gear (2), vertical shaft base bearing bushing, ball bearing (2), tubing, camshaft gear, vertical shaft gear, lower vertical shaft bearings (2 sets), filter elements (12), gaskets, pipe, fuel lines, valves, gauges, governor crosshead assembly, governor weight assembly and miscellaneous small parts.

(d) See answer to Interrogatory No. 15(b) and (c).

(e) One service engineer, 15 days.

One service engineer, 14 days.

One service engineer, 110 hours.

One service engineer, 61½ hours.

One principal service engineer, 3 days.

(f) At Manzanillo, October 31 to November 3, 1948. At Los Angeles (Long Beach) November 11 to November 17, 1948. At sea, with service engineer aboard, from November 17 to November 23, 1948, and also during period November 3 to November 10 at sea.

(g) The Union Diesel Engine Company.

(h) See answer to Interrogatory No. 15(b) and (c).

(i) Yes.

(j) No, not by any underwriters, but a report of survey was obtained from Lloyd's Agent, Captain Walter Gay, by Best and Co., Lloyd's Sub-Agents, Frank S. Dupuy & Son, George M. Dupuy, Surveyor.

Interrogatory No. 17: (a) Miscellaneous repairs included 18 items of specifications covering: light and water furnished, repair of diffuser motor in vegetable box, repair of bilge pumps, repair of leaks in sea suction, change connection of fuel pump suction, repair of telemotor system, service refrigerator system, overhaul and check cylinder heads on auxiliaries, furnish regulators, diaphragms, studs and pumps and miscellaneous material, install two new motors in Modine heater and 3 new fans, calibrate gauges, overhaul valves in air compressor and air bottle, check and adjust anchor windlass, repair wiring in stern light, remove, rewind and reinstall

grounded field coil in starboard generator, check and repair telephone system, alter exhaust line.

(b) Approximately 48 hours.

(c) November 15, 1948—commenced, November 17, 1948—completed.

(d) Craig Shipbuilding Co., Long Beach, California.

(e) Failure of cross-respondents to properly perform the contract and extra specifications relating to each of the items enumerated in subparagraph (a) above, as will be more fully disclosed by evidence presented by cross-libelant at time of trial.

Interrogatory No. 18: (a) Eight cargo tanks, Nos. 1, 2, 3, and 4, port and starboard.

(b) Martin Ship Service Co., Wilmington, California.

(c) A tight rust scale had been left on internal surfaces tanks with some loose powdery rust on tank bottoms after cleaning by cross-respondents at Winslow, Washington. Small areas on bulkheads showed soft black oil residue. More highly oxidized black oil residue was found next to most seams, collars of steam coils and like places. Occasional blobs of black oil dropped from upper beams or tank tops subsequent to cleaning operations at cross-respondents' yard.

(d) Failure to properly perform item 10 of contract specifications as will be more fully disclosed by evidence presented by cross-libelant at time of trial.

Interrogatory No. 19: (a) An exact computation of the extra miles traveled by the vessel on ac-

count of deviation for repairs is not possible at this time. However, the official mileage from Los Angeles to Manzanillo, Mexico, is 1205 miles, which when doubled, covering the deviation on round-trip voyage, would make a total of 2410 miles traveled during deviation.

(b) Approximately 169.3 barrels of Diesel oil were consumed during the above period of deviation according to calculations made to date.

(c) Additional fuel was furnished by the Shell Oil Company at San Pedro.

Interrogatory No. 20: (a) A free translation from Spanish to English of the agency disbursements indicates the following:

Launch hire 10/28 to 10/30 at \$25.00 per day, plus tax.....	\$ 76.35
Launch hire for use of captain and crew, 11/3	96.00
Launch hire for use of pilot (or mate), 11/4	25.00
Mexican Customs entry and clearance, charges and assessments 10/28 and 11/3...	161.38
Replacing broken tool in naval machine shop 11/2	4.50
Refrigeration machinery repairs 11/1....	70.00
Bronze soldering piece of machinery 10/31	40.00
Mexican officials trip to "Urania" on departure	29.47
Processing documents of entry by captain of the port, 10/28.....	10.00
Captain of the port handling dispatch documents on vessel's departure.....	20.00

Two mechanics to attend the ship's repairs, 11/3	80.00
Customs traffic dues, No. 3736230, 10/29...	17.05
Sailor's home tax 10/29, receipt No. 3736231	10.00
Extra services to land and bring again on board spare engine parts with launch, 11/2	35.80
Motor car bill to convey Union Diesel En- gine Co. engineer from air port to Man- zanillo, 10/30.....	15.00
Motor car services for vessel's business: 11/2—\$7.00; 11/4—\$10.00.....	17.00
Panamanian Consular fees Manzanillo, 11/3	34.75
Medical attendance of seaman Charilaos Tziotis, 11/2.....	30.00
Medicines for above seaman, 11/10.....	175.10
Victualing bill 11/3.....	472.36
Machine shop services on Sunday, 11/10..	80.00
Cable messages New York.....	10.75
Agencias Maritimas del Pacifico, S. A., agency fee	150.00

Accounts, including vouchers and invoices, for additional items of disbursement at Manzanillo, Mexico, for the M/T "Urania" have heretofore been forwarded to representatives of the cross-libelant in New York City for use in connection with the depositions being taken in that city of the former master, Andrew Beis, and the former engineer, P. Baxevanis, of the "Urania." Upon return of these documents, either as exhibits in

deposition, or separately, supplemental answer will be made as necessary to complete information requested by cross-respondent on this interrogatory.

(b) Disbursements were made to the individuals performing the services enumerated above through *Agencias Maritimas del Pacifico, S. A.*, who acted as agents for the vessel and owners at Manzanillo, Mexico.

Interrogatory No. 21: (a) Disbursements made through the agents for the vessel and owners at Los Angeles which are claimed to have been caused by the breakdown, deviation and repair of the vessel include the following:

11/16/48	Clayton Mfg. Co., Repaired pump on steam generator.....	\$678.86
11/12/48	E. W. Sayboldt & Co., Preliminary inspection cargo tanks.....	28.75
11/15/48	E. W. Sayboldt & Co., Final inspection tanks and certificate.....	28.75
11/5-11/17	Gen. S. S. Corp., Ltd., L. A., Agency fee representing vessel owner....	455.00
11/5/48	Gen. S. S. Corp. Ltd., L. A., Reporting fee—ship's movements.....	2.50
11/17/48	L. A. Harbor Dept., Pilotage fees—L. A. Harbor.....	20.00
11/17/48	L. A. Harbor Dept., Dockage dues—L. A. Harbor.....	5.00
11/17/48	Hi-Ho Water Taxi Co., Ltd., Launch hire to ship—breakwater San Pedro	10.55
11/12 & 11/16/48	Guy B. Barham Co., Customs fees & customs broker fees.....	45.30

11/11/48	Guy B. Barham Co., Customs officers boarding fees—prorated.....	9.56
11/17/48	Westland & Son, Consular fees, U. S. Bill of Health, etc.....	25.00
10/27/48	United Airlines Air Freight, Freight charges, 1 carton engine parts to L. A.....	227.55
10/28/48	Hawaiian Freight Fwdrs. Ltd., Freight on 1 box gears L. A. to Manzanillo	28.83
11/15/48	United Airlines Air Freight, Freight on 3 boxes parts Oakland to L. A.	8.40
11/5/48	Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, San Pedro to N. Y....	3.95
10/28-10/29	Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, San Pedro & L.A.	3.95
11/9-11/16	Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, L. A. to San Diego, Oakland.....	7.06
11/5	Gen. S. S. Corp. Ltd., L. A., Long distance tolls, San Pedro to San Diego....	1.88
10/28-11/11	Gen. S. S. Corp. Ltd., L. A., Telegrams & Cables L. A. to various.....	9.09
11/11-11/19	Harry J. Summers, Attendance on vessel as owner's surveyor.....	200.00
11/11-11/17	Am. Bureau of Shipping, Attendance on vessel of classification surveyor	163.00
11/11-11/17	Toplis & Harding, Inc., Attendance on vessel of Lloyd's surveyor....	154.81
11/11/48	Guy B. Barham Co., Service U. S. Immigration Inspector—prorated...	16.26

11/18 Gen. S. S. Corp. Ltd., L. A., Cable charges, L. A. to Manzanillo.....	2.20
11/10 San. Cal. Freight Lines, Auto freight charges, S. F. to Long Beach.....	3.23
11/5-11/17 Gen. S. S. Corp. Ltd., L. A., Postage and petties.....	10.00
	<hr/>
	\$2,149.48

The amount claimed hereinabove for agency disbursements at Los Angeles has been revised upwards since filing of the cross-libel on the basis of additional vouchers and invoices received by cross-libelant to date.

(b) Disbursements were made to the parties performing services enumerated above through the General Steamship Corporation, Ltd., at San Pedro who acted as agents for the vessel and owner at Los Angeles, California.

Interrogatory No. 22: (a) See answer to Interrogatory No. 21 (a). The following additional expenses were incurred during repair at Long Beach

11/16 Berbom Ship Supply Co., Engine & deck stores.....	\$ 563.28
11/17 Berbom Ship Supply Co., Deck supplies	110.08
11/17 Berbom Ship Supply Co., Engine supplies	10.54
11/16 Berbom Ship Supply Co., Engine room supplies	261.17
11/16 Berbom Ship Supply Co., Steward's supplies	199.55

11/16 Consolidated Provision Co., Groceries, meat, fruit and vegetables.....	1,183.50
11/12 R. C. Griffith Co., Fish, vegetables & fruit	41.91
11/16 Marine Drug Co., Beverages.....	63.94
11/16 Howard Hartry, Tobacco & spirits	101.90
11/16 Marine Drug Co., Pharmaceutical & drug supplies.....	220.23
11/16 Klemp Typewriter Co., Stationery supplies	16.23
11/16 Klemp Typewriter Co., Typewriter	112.75
11/18 Radiomarine Corp. of America, Service radio dir. finder.....	156.24
11/17 Calif. Nautical Co., Adjust magnetic compass	65.00
11/17 Hi Ho Water Taxi Co. Ltd., Transport compass adjuster.....	11.50
11/11 Gen. S. S. Corp. Ltd., Cash advanced to master.....	500.00
11/12 Gen. S. S. Corp. Ltd., Cash advanced to master.....	1,000.00
11/15 Gen. S. S. Corp. Ltd., Cash advanced to master.....	2,500.00
11/16 Harbor Laundry Co., Ship's laundry	26.77
11/13-16 Norman Clinic, Medical service to seaman	19.50
11/15 Norman Clinic, Medical service to seaman	12.00
11/13 Norman Clinic, Medical service to seaman	5.25

11/13-16	San Pedro Comm. Hospital, Hospital charges for seaman.....	62.20
11/13	Marine Drug Co., Drugs for ill seaman	1.25
11/15-11/17	San Pedro Cab Co., Auto transp. for ship's representatives.....	44.40

In addition to the above, disbursements were made during the period involved for wages, overtime, marine and P.&I. insurance, and an allowance for depreciation as computed in answer to Interrogatory 10(a) hereinabove. The amount claimed in subparagraph 14 of Article IV of the cross libel is not based upon the amount of the specific disbursements enumerated above. The amount claimed is based upon the factors shown in answer to Interrogatory No. 10(a) and is based upon a revised calculation of the average monthly and per diem cost of operation for the vessel.

(b) See above.

(c) See above.

Interrogatory No. 23: As to subparagraphs (a), (b), (c) and (d), cross-libelant refers to and repleads its answers to Interrogatory No. 11 hereinabove.

(e) The 28-day period began on October 26, 1948, and terminated November 23, 1948.

COMPANIA NAVIERA

LIMITADA, a corporation,

Cross-Libelant.

By MERRITT SUMMERS &

BUCEY,

/s/ CHARLES B. HOWARD,

Its Proctors

United States of America,
Western District of Washington,
Northern Division—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says: That he is an attorney at law and a partner in the firm of Merritt, Summers & Bucey, proctors for the respondent-claimant and cross-libelant in the above action. That he makes this verification for and on behalf of the cross-libelant for the reason that there is no officer or other authorized agent of the cross-libelant now present within this District available to do so. That he is familiar with the answers to the interrogatories which have been prepared from draft submitted to an officer of the cross-libelant corporation in New York who has returned the draft with corrections and additions. That this affiant believes the aforementioned answers to be true and correct answers to the best of his knowledge and to the best of the information now available to cross-libelant and this affiant. That this affiant is authorized to make this verification for and on behalf of the cross-libelant corporation.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 21st day of February, 1949.

[Seal] /s/ G. H. BUCEY,
Notary Public in and for the State of Washington,
residing at Seattle.

Received Feb. 21, 1949.

[Endorsed]: Filed Feb. 21, 1949.

[Title of District Court and Cause.]

ANSWER TO CROSS-LIBEL

The answer of cross-respondents above named to the cross-libel of Compania Naviera Limitada, a corporation, in an alleged cause of repairs and damages, civil and maritime, admits, denies and alleges, as follows:

I.

As to Article I, cross-respondents admit the allegations thereof.

II.

As to Article II, cross-respondents admit the allegations thereof.

III.

As to Article III, cross-respondents deny each and every allegation contained therein, except in so far as heretofore affirmatively alleged by cross-respondents in their original libel filed in the above cause.

IV.

As to Article IV, cross-respondents deny each and every allegation contained therein.

V.

As to Article V, cross-respondents deny each and every allegation therein contained, and particularly deny that cross-libelant has been damaged in the sum of \$41,389.51, or in any sum whatsoever.

VI.

As to Article VI, cross-respondents deny the alle-

gations thereof, excepting only the jurisdictional allegation.

Further Answering Said Cross-Libel, cross-respondents allege on information and belief:

VII.

That if cross-libelant was damaged in any sum as alleged, such damages were not caused by any mal-performance by cross-respondents but were solely, directly and proximately caused by inaction, lack of timely action, carelessness and negligence of the cross-libelant.

VIII.

That during and after the time when cross-respondents furnished to said vessel material, labor and services for the repair, alteration and renewal of said vessel, cross-libelant supervised, tested, inspected, approved and accepted said material, labor and services; that said supervision, testing, inspection, approval and acceptance constituted a waiver of defects, if any, in cross-respondents' performance, and the cross-libelant is estopped by reason of said supervision, testing, inspection, approval and acceptance to claim damages on account of defects, if any, in cross-respondents' performance.

IX.

That if there was any agreement between the parties as to the time of completion of the original services undertaken to be performed for the "Urania" by cross-respondents, cross-libelant waived its rights, if any, to rely on such agreement

by contracting with cross-respondents for additional services to be performed on the vessel.

X.

That as to the ammunition bulkhead referred to in Article IV, sub-section (2) of the cross-libel, cross-respondents were ordered by cross-libelant not to remove said bulkhead; that cross-libelant ordered cross-respondents to perform certain other work on the vessel in lieu of the removal of said bulkhead; that said other work was performed by cross-respondents pursuant to said order, the same being of a reasonable and agreed value equal to the amount of the agreed charge for the removal of said bulkhead.

XI.

That all and singular the premises are true.

Wherefore, cross-respondents pray that the cross-libel herein be dismissed with costs.

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants
and Cross-Respondents.

United States of America,
Western District of Washington—ss.

Russell V. Hokanson, being first duly sworn, upon oath deposes and says: That he is one of the proctors for libelants and cross-respondents in the above action and that he makes this verification for and on behalf of said libelants and cross-respond-

ents, being authorized so to do; that he has read the within and foregoing Answer to Cross-Libel, knows the contents thereof and believes the same to be true.

/s/ RUSSELL V. HOKANSON.

Subscribed and Sworn to before me this 25th day of February, 1949.

[Seal] /s/ RICHARD S. WHITE,
Notary Public in and for the State of Washington,
residing at Seattle.

Copy received Feb. 25, 1949.

[Endorsed]: Filed Feb. 26, 1949.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER SUPREME COURT ADMIRALTY RULE 32

Libelants-cross-respondents move the court for an order requiring cross-libelant corporation, *Compania Naviera Limitada*:

(1) To produce each of the following documents at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, or at such other place as the court may direct, on or before the 17th day of March, 1949, or at such other time as the court may direct, and to permit libelants-cross-respondents, their proctors, technical advisers, and/or photographers to inspect,

copy and/or photograph each of said documents, to-wit:

(a) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between August 1, 1948 and October 15, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from, architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, the American Bureau of Shipping and Harry F. Williams, surveyor.

(b) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between October 15, 1948 and November 23, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, owner's surveyor, Harry J. Summers, the American Bureau of Shipping, the Union Diesel Engine Company of Oakland, California, Martin Ship Service Company of Wilmington, California, Craig Shipbuilding Company of Long Beach, California, Pacific Towboat & Salvage Company, E. W. Sayboldt & Co., and reports of surveys obtained from

Lloyds' agent, Captain Walter Gay, by Best & Co., Lloyds' sub-agents, Frank S. Dupuy & Son, George M. Dupuy, surveyor.

(c) Any and all deck log books, engine room log books, and bell books of the vessel, covering the period between August 1, 1948 and November 23, 1948.

(d) Contract dated December 13, 1948, for charter party between Compania Naviera Limitada of Panama, and Coastwise Petroleum Company.

(2) To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, or at such other place as the court may direct, on or before the 17th day of March, 1949, or at such other time as the court may direct, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects.

(a) Any and all engine parts or other parts of the Motor Tanker "Urania" removed from said vessel after October 15, 1948, for the purpose of introducing the same into evidence as exhibits upon the trial of the above entitled cause.

TODD, HOKANSON & WHITE,
/s/ RICHARD S. WHITE,
Proctors for Libelants-
Cross-Respondents.

United States of America,
Western District of Washington—ss.

Richard S. White, being first duly sworn, on oath deposes and says:

That he is one of the proctors for libelants-cross-respondents and makes this verification for and on behalf of said libelants-cross-respondents in support of the foregoing motion, being authorized so to do; that he is informed and believes that the cross-libelant corporation has the possession, custody or control of each of the foregoing documents and objects; that each of them constitute or contains evidence relevant and material to a matter involved in this action; that it is necessary that the libelants-cross-respondents obtain the relief requested in order to enable them to prepare intelligently and accurately to meet the issues raised by the pleadings herein.

/s/ RICHARD S. WHITE.

Subscribed and Sworn to before me this 25th day of February, 1949.

[Seal] /s/ RUSSELL V. HOKANSON,
Notary Public in and for the State of Washington,
residing at Seattle.

Copy received Feb. 25, 1949.

[Endorsed]: Filed Feb. 26, 1949.

[Title of District Court and Cause.]

ORDER ON MOTION FOR PRODUCTION OF
DOCUMENTS, ETC., UNDER SUPREME
COURT ADMIRALTY RULE 32

It appearing that cross-respondents moved the Court for an order requiring cross-libelant to produce certain documents, etc., under Supreme Court Admiralty Rule 32, and the said motion having been regularly noted for hearing on March 7, 1949, before the undersigned Judge of the above entitled Court, and it further appearing that proctors for cross-libelant and cross-respondents having agreed with respect to said motion, and the Court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered and Decreed that cross-libelant corporation, Compania Naviera Limitada, shall be and is hereby required:

(1) To produce each of the following documents at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers, and/or photographers to inspect, copy and/or photograph each of said documents, to-wit:

(a) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between August 1, 1948 and Oc-

tober 15, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from, architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, the American Bureau of Shipping and Harry F. Williams, surveyor.

(b) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between October 15, 1948, and November 23, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, owner's surveyor, Harry J. Summers, the American Bureau of Shipping, the Union Diesel Engine Company of Oakland, California, Martin Ship Service Company of Wilmington, California, Craig Shipbuilding Company of Long Beach, California, Pacific Towboat & Salvage Company, E. W. Sayboldt & Co., and reports of surveys obtained from Lloyds' agent, Captain Walter Gay, by Best & Co., Lloyds' sub-agents, Frank S. Dupuy & Son, George M. Dupuy, surveyor.

(c) Any and all deck log books, engine room log books, and bell books of the vessel, covering the period between August 1, 1948 and November 23, 1948.

(d) Contract dated December 13, 1948, for charter party between Compania Naviera Limitada of Panama, and Coastwise Petroleum Company.

(2) To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects:

(a) Any and all engine parts or other parts of the Motor Tanker "Urania" removed from said vessel after October 15, 1948, for the purposes of introducing the same into evidence as exhibits upon the trial of the above entitled cause.

Done in open Court this 9th day of March, 1949.

/s/ JOHN C. BOWEN,

Judge.

Approved and Presented by:

TODD, HOKANSON & WHITE,

Proctors for Libelants,

By /s/ RICHARD S. WHITE.

Approved:

MERRITT, SUMMERS

& BUCEY,

Proctors for Claimant,

By /s/ CHARLES B. HOWARD.

[Endorsed]: Filed Mar. 9, 1949.

[Title of District Court and Cause.]

NOTICE OF INTENTION TO AMEND
CROSS-LIBEL

To: The Libelants and Cross-Respondents Above
Named and to Their Proctors of Record, Todd,
Hokanson & White (formerly Langlie & Todd):
Claimant and cross-libelant, Compania Naviera
Limitada, a corporation, does hereby give notice
that it will, on April 6, 1949, apply to the Honor-
able John C. Bowen, judge of the above entitled
court, pursuant to General Admiralty Rule 23, for
an order permitting amendment of cross-libel in
the following respects:

(a) To eliminate and delete from the cross-libel
subparagraph (1) of paragraph IV reading as fol-
lows: "Tools taken from the vessel and not returned
thereto—\$368.00."

(b) To add to paragraph IV of said cross-libel
a new subparagraph (1) reading as follows: "Re-
pairs to Clayton boiler and generator at Long Beach
—\$678.86."

The amendment of the cross-libel in the above
respects would result in the substitution of a new
and revised page 3 in lieu of the page 3 now ap-
pearing in the cross-libel, as per proposed amended
page 3, copy of which is attached hereto.

Dated this 18th day of March, 1949, at Seattle,
Washington.

MERRITT, SUMMERS
& BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant
and Cross-libelant.

AMENDED PAGE 3

[Cross-Libel, Document 15 of Designation, set out on page 18 to page 23 inclusive of this printed record.]

expenses which have not been definitely ascertained as to exact amount, but have been presently estimated as follows:

(1) Repairs to Clayton boiler and generator at Long Beach.....	\$ 678.86
(2) Removal of ammunition bulkhead not effected	275.00
(3) Expense incurred during delay at Winslow, Washington, (16 days at \$246 per day)	3936.00
(4) Loss of profits during delay at Winslow, Washington, (16 days at \$250 per day)	4000.00
(5) Telemotor repairs at Port Angeles, Washington, (including 2 men, one surveyor, and air transportation)	262.51
(6) Deviation to Port Angeles, Washington, for telemotor repairs	310.00
(7) Towage after breakdown from Manzanillo, Mexico, to San Pedro, California	4286.00
(8) Engine repairs at Long Beach, California	4475.00
(9) Miscellaneous corrective repairs at Long Beach, California	3214.00
(10) Corrective cleaning of tanks at Long Beach, California	2157.00

Copy received March 18, 1949.

[Endorsed]: Filed March 18, 1949.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION

Comes now the claimant and cross-libelant above named and, pursuant to Admiralty Rule 32, moves the court for an order directed to the libelant and cross-respondent requiring the production at a time and place to be specified by the court before trial of the following documents and articles:

(1) Any specifications, invitations, instructions to bidders, or other written documents relating to the specifications and proposed bid obtained or received by Commercial Ship Repair from the claimant and cross-libelant herein relating to the tanker "Urania."

(2) Any bids or modifications of bid issued by the libelant and cross respondent in connection with the tanker "Urania."

(3) Any and all suppliers' or manufacturers' invoices, and/or inventory or stock withdrawal and price records or documents relating to spare parts furnished to the respondent vessel by the libelant.

(4) Any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel on each item of the contract and/or extra specifications.

(5) Any and all communications relating to demands made by libelant upon the claimant for payment of the outstanding accounts up to the date of filing of libel herein.

(6) Any and all work orders, time sheets or similar documents of account containing approval

by signature of one Harry F. Williams on the accounts involving the respondent vessel.

(7) Any and all engine parts or other parts of the motor tanker "Urania" removed from said vessel by the libelant or now in the possession of the libelant or its representatives which the libelant intends to introduce into evidence as exhibits upon the trial of the above cause.

MERRITT, SUMMERS
& BUCEY,
CHARLES B. HOWARD,
/s/ LANE SUMMERS,
Proctors for Claimant
and Cross-libelant.

United States of America,
State of Washington, County of King—ss.

Lane Summers, being first duly sworn, on oath deposes and says:

That he is an attorney at law and a member of the firm of Merritt, Summers & Bucey, and as such one of the proctors for claimant and cross-libelant in the above entitled cause.

That this affidavit is made in support of the foregoing motion for production. That the documents and articles mentioned in said motion constitute evidence and exhibits material to cross-libelant's claims as made by its cross-libel, and are essential to proper preparation of cross-libelant's case. That such documents and articles are either within the possession of or under the control of cross-respond-

ent, its agents or employees, and are not available to cross-libelant without production thereof upon said motion. That said documents and articles are not of a privileged nature.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 28th day of March, 1949.

[Seal] /s/ G. F. BUCEY,
Notary Public in and for the State of Washington,
residing at Seattle.

Copy received March 28, 1949.

[Endorsed]: Filed March 28, 1949.

[Title of District Court and Cause.]

ORDER ON MOTION FOR PRODUCTION OF
DOCUMENTS UNDER ADMIRALTY RULE 32

It appearing that claimant and cross-libelant has heretofore moved the court for an order directing and requiring libelant and cross-respondent to produce certain documents and other papers at a time and place to be specified by the court before trial, and it further appearing that proctors for cross-libelant and cross-respondents have agreed with respect to said motion, and the court being fully advised in the premises, now, therefore, it is hereby Ordered and Decreed that libelants and cross-respondents shall be and are required to produce,

on or before the 6th day of April, 1949, the following documents and articles:

(1) Any specifications, invitations, instructions to bidders, or other written documents relating to the specifications and proposed bid obtained or received by Commercial Ship Repair from the claimant and cross-libelant herein relating to the tanker "Urania."

(2) Any bids or modifications of bid issued by the libelant and cross-respondent in connection with the tanker "Urania."

(3) Any and all suppliers' or manufacturers' invoices, and/or inventory or stock withdrawal and price records or documents relating to spare parts furnished to the respondent vessel by the libelant.

(4) Any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel on each item of the contract and/or extra specifications.

(5) Any and all communications relating to demands made by libelant upon the claimant for payment of the outstanding accounts up to the date of filing of libel herein.

(6) Any and all work orders, time sheets or similar documents of account containing approval by signature of one Harry F. Williams on the accounts involving the respondent vessel.

(7) Any and all engine parts or other parts of the motor tanker "Urania" removed from said vessel by the libelant or now in the possession of the libelant or its representatives which the libelant

intends to introduce into evidence as exhibits upon the trial of the above cause.

Done in open court this 6th day of April, 1949.

/s/ JOHN C. BOWEN,

U. S. District Judge.

Approved by:

TODD, HOKANSON & WHITE,

/s/ RUSSELL V. HOKANSON,

Of Proctors for Libelants
and Cross-Respondents.

Presented by:

/s/ THEODORE A. LeGROS,

Of Proctors for Claimant
and Cross-Libelant.

[Endorsed]: Filed April 6, 1949.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, d/b/a COMMERCIAL SHIP RE-
PAIR,

Libelants,

vs.

M/T "URANIA," etc.,

Respondent,

COMPANIA NAVIERA LIMITADA,

Claimant.

COURT'S DECISION

Announced on April 18, 1949

The Court: All of the original contract items, as I understand it, are undisputed so far as the work done and the charges made therefor are concerned, with the exception of certain substituted work.

The respondent frankly observed in the course of argument on the merits that the extent of Mr. Williams' authority to represent the owner of the vessel is perhaps the one outstanding question for determination by the Court, at least so far as the right of the libelants to recover on account of the matters and things alleged in the libel may be concerned. The Court has heard and carefully con-

sidered all of the testimony upon that issue, as well as all the other issues in the case.

I know of no fact in the case more firmly established than that Mr. Williams was held out by the owner as having authority to represent the owner in all things concerning the work and the ordering of extra repairs not covered by the original contract. So far as concerns the owner advising the libelants that there was any limitation of any character upon the authority of Mr. Williams to represent the owner, there is no credible evidence in this case to support that.

The owner, through the testimony of Mr. Antipas, put forward a contention in effect that the libelants should have been aware of the fact that in some special matters, Mr. Williams could not have been supposed to have authority from the owners to cover his handling of those matters and acting for the owner to the same extent that the owner through some corporate official could have acted, but there is nothing in the evidence to warrant any such contention on the part of the owner.

Mr. Williams was sent here to represent the owner, and he did represent the owner in everything that concerned the doing of this work and the acts that were reasonably connected with it. No acts done by Mr. Williams for the owner were ever repudiated until after this libel was filed. The Court, therefore, finds, concludes and decides from a preponderance of the evidence that the authority of Mr. Williams to represent and bind the owner

was without limitation so far as the matters and things alleged in the libel are concerned.

In every instance of Mr. Williams' approval of work done and in every instance of acts done by Mr. Williams in connection with the repairs and work on the "Urania," Mr. Williams' authority to bind the owner was ample and sufficient, and Mr. Williams' acts, both as to original contract items and extra items, did bind the owner of the "Urania."

He had every appearance of having unlimited authority to represent the owner in approving the work and authorizing extras in every instance when he purported to act for the owner. If there was in fact in the owner's mind any thought of limitation of such authority, it was incumbent upon the owner to so advise the libelants in some certain way. No such limitation was ever communicated to the libelants.

The Court, from a preponderance of the evidence, further finds, concludes and decides that all of the work which was done in pursuance of the original contract and in connection with the extras ordered by Mr. Williams was actually done as alleged in the libel, was authoritatively approved by Mr. Williams on behalf of the owner as alleged in the libel, and that the charges made by libelants therefor are in all respects reasonable, and libelants are entitled to recover of and from the respondent all of the sums as prayed for in the libel.

The substitute work was done in place of the item

in the contract calling for removal of a bulkhead at a cost of \$200. Mr. Williams himself testified that although the bulkhead was not removed according to the specifications, additional substitute work was done in amount and value satisfactory to him, and, therefore, there will be no deduction from the sums asked for by libelants on account of that \$200 bulkhead removal item.

Referring now to the extra coils for the Clayton boiler, Mr. Featherstone, one of the libelants, clearly recalled the transactions regarding that matter, when he spoke of not having any of those extra coils at the Winslow yard and of having some of them in libelants' Seattle warehouse where the libelants ordinarily kept spare parts used in ship repairs, when he spoke of having the extra coils looked over carefully and of having selected one set that was regarded as suitable for the Clayton boiler on the "Urania," and of having that extra set transported from Seattle over to the Winslow yard and there put aboard the "Urania." It is not likely that Mr. Featherstone would have had that done without any authorization from Mr. Williams. Mr. Featherstone's recollection of the foregoing details concerning the extra coils is significant.

It is more likely that Mr. Williams has forgotten the detail. The Court declines to allow any deductions from the amounts to be recovered by libelants on account of the work substituted for the bulkhead removal and extra coils for the Clayton boiler.

Mr. Williams was on the job a great percentage

of the time, and he worked without any evidence of friction with the superintendents and the foremen and workmen in and about the yard, and so far as the evidence discloses, there never were any irreconcilable differences between him and others working in the yard as to the amount or quality of the work called for by the original contract or the extra job orders.

The Court was convinced more by the testimony of Mr. Williams than by any other testimony, as to the fairness of these items, respecting both the quantity and prices of materials and work furnished by libelants. Particularly, his testimony in effect that the repair job as a whole was done in a good workmanlike manner caused the Court to conclude that the libelants did supply good materials and good shipyard work in connection with all the repairs made.

This the Court so concludes notwithstanding the fact that some of the shipyard foremen or subforemen failed to relate from the witness stand very clear-cut narratives or accounts of what was done, or definite personal knowledge of details of the work actually done. In at least three instances, I thought libelants' witnesses showed a surprising lack of personal recollection of the details of the work done.

Yet, I am convinced, from a consideration of all the evidence and by a preponderance thereof, that one of the reasons why some of these foremen or subforemen may not have retained in their minds in minute detail what they personally did or saw

done in connection with the repairs, was that they were doing so much of the work under direction of ship officers or personnel, notably the chief engineer or persons in the engine room department, and they were doing the work in detail as ordered rather than in accordance with written specifications or what the foremen or subforemen thought should be done. Consequently, in such instances, the final functioning of a repaired unit was not to be so much in accordance with the satisfaction of a foreman or subforeman, but was to be rather for the approval of Mr. Williams and Mr. Gallagher or as required by a department of the ship or its head particularly interested in the specific item.

Coming now to the cross libel, it appears from the allegations of the cross libel and testimony in support thereof that as a matter of fact the cross libelant, the owner of the vessel, sustained considerable expenses in California and Mexican waters and ports due to a failure of the main engine, and more specifically, due to the galling of the vertical timing gears of the main engine. As to cross libelant's right to recover on account of the matters and things set forth in the cross libel, the burden rests upon the cross libelant to prove as alleged that such engine failures were caused by faulty repairs made by libelant.

So far as the main engine and its auxiliary equipment are concerned, all parts operated efficiently from the time of the beginning of the sea trial at Seattle until the vessel arrived off Manzanillo,

Mexico, more than eleven days later. The sea trial was had before the vessel departed from Seattle. The occurrence of the main engine's failure off Manzanillo was about eleven days after the vessel left Seattle.

The engine functioned properly for ten days. The main engine failure first occurred on the eleventh day out of Seattle and about a day after the lubricating oil was changed. No difficulty in the functioning of the engine or any of its auxiliary equipment had been experienced during the sea trial or at any time during those ten days out of Seattle before the lubricating oil was changed. The Court is not entirely convinced by the evidence as to just exactly what was the cause of that engine trouble or of the galling of those gears, but I am convinced of one thing, and that is, of the failure of the cross libelant to sustain the burden of showing, by a preponderance of the evidence, just what the cause was.

I am not entirely satisfied in my own mind from the evidence whether or not there actually was contamination in the lubricating oil. If it is established by the evidence that lube oil contamination of some kind or other was the cause, I am not entirely satisfied as to the nature of the contamination, whether it was sea water or whether it was some foreign matter other than sea water which had been introduced into the lubricating oil.

Furthermore, I am not satisfied from the evidence as to what was the means of introducing the foreign matter, either sea water or other kind of contamina-

tion, if there was some kind of contamination, into the lubricating oil. If there was sea water contamination, I am not sure whether it all was admitted through leaks or whether it was admitted in some other way.

Cross libellant contends and it might be supposed that a leak in the partition wall between the sea water cooling agent and the lube oil admitted the sea water into the lube oil, but I do not know from the evidence certainly that the leaks, if any, were caused by any defective repair work done at Seattle. If leaks did in fact admit the sea water, the leaks might have developed from ordinary wear and tear after the vessel left Seattle, instead of from faulty repairs at Seattle.

One witness testified that the chief engineer definitely instructed just what was to be done, what kind of work, servicing and testing were to be done with respect to the heat exchangers and lube oil cooler, and that the libelants as repairmen undertook on their own responsibility no duty to determine the extent of repairs or servicing or testing which was to be done, but did only what the chief engineer specifically directed in pursuance of the contract stipulation in that connection.

Also, I do not think that it is to be concluded from the evidence before the Court here that the galling of the gears was not caused in part by some abnormal pressures not connected with the repairs. There is considerable uncertainty about what might have caused the galling of the gears, but one of the

outstanding circumstances surrounding the problem is a circumstance very strongly in favor of the workmanlike quality of the repairs made at Seattle, namely, that the engine and its auxiliary parts functioned normally and satisfactorily, not only at the time of the sea trial, when Mr. Williams, on behalf of the owner, and also Mr. Gallagher, on behalf of the American Bureau of Shipping, approved the repair work, but also during the ten days' run from Seattle to a point off Manzanillo, during all of which time there was no evidence of improper functioning of either the main engine or its timing gears, but on the contrary, such functioning was proper.

No one can decisively conclude from the evidence in this case that such damage or galling as the timing gears sustained might not have all been caused during the day that they were operating after the first change of lubricating oil was made following the initial ten days' run from Seattle.

A substantial portion of all of the repair work done by libelants was done not to the extent and in the manner as determined by the discretion of the libelants, but according to the discretion and direction of those representing the owner of the vessel as the contract provided. In that connection, we should bear in mind the fact that the vessel had been out of use for some time before the repairs were made.

A relatively minor failure or damage occurred near Port Angeles when the telemotor system failed. But the statement on page 6 of Libelant's Exhibit 17, item 41(a) that, "All parts of the steering engine

were examined and were found in good condition," cannot be lightly laid aside, for that is what Mr. Gallagher, as a representative of the American Bureau of Shipping, found from his observation of the telemotor's functioning on the sea trial.

That finding, taken in connection with other testimony in the case, convinces the Court that the work of repair and servicing of the telemotor system was done in a good workmanlike manner and in accordance with good shipyard practice, and that the failure in that system occurring near Port Angeles was due to causes other than improper work of libelants.

Finally, it is the finding, conclusion and decision of the Court from a preponderance of the evidence in this case that the cross libelants take nothing by the cross libel. It is the further decision of the Court that libelants recover their taxable costs herein. Such recoveries as are allowed by the Court in favor of libelants shall be without interest prior to entry of judgment and decree if such entry can be soon accomplished.

Is there any issue tendered in the libel or cross libel or any answer to either of them not covered by the Court's announced decision? If so, will you advise me of it now?

Mr. Howard: I believe there is one item that was not specifically commented on with respect to the cross libel, the claim for cost of repairs to the Clayton boiler.

The Court: I do not think as to that item, any more than the others, that the cross libelant has

sustained its burden of proving the repair work was defective or other than workmanlike in accordance with good shipyard practice, and for that reason the Court does as to that item specifically deny recovery to the cross libelant.

(Discussion re date of further proceedings.)

The Court: This case is continued until Thursday, May 5, 1949, at 10:00 o'clock in the forenoon, for the purpose of settling and entering findings of fact, conclusions of law and decree.

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

Costs

	Amount Claimed	Amount Allowed
Docket fees (Proctor's) libel and cross-libel		
—\$20 each	\$ 40.00	\$ 40.00
Proctor's fee (each deposition read in evidence at \$2.50 each—James D. Clarke, S. W. Newell, Arleigh O. Biehler, George W. Rourke, M. L. Newell, William H. Weiler, Edwin W. Pike, George M. Dupuy, Harry J. Summers, Andreas Beis, P. Baxevanis, N. A. Cross, Frank H. Gallagher.)	32.50	32.50

Disbursements

	Amount Claimed	Amount Allowed
Clerk's fees	\$ 15.00	\$ 15.00
Marchal's fees—advertising, keeper service, etc.	48.40	48.40
Disbursement for notary's fee and original transcript, Gallagher deposition.....	151.40	151.40
Cost bond on libel—premium.....	10.00	10.00
Witness fees:		
Name Days Miles		
Arthur H. Lindgren.. 2 (Winslow)	40 6.00	6.00
Harry F. Williams.... 1	2 2.10	2.10
Frederick J. Harper.. 1 (Winslow)	20 3.00	3.00
Carl J. Nordstrom..... 1	2 2.10	2.10
Richard Storrs 1	2 2.10	2.10
Ole Lillehei 2 (Winslow)	40 6.00	6.00
A. H. McDonald..... 1	2 2.10	2.10
J. L. Sweetin..... 1	2 2.10	2.10
Fred Finn 1 (San Francisco)	200 12.00	12.00
Walter Oakland 1 (Winslow)	20 3.00	3.00
Harold Woodman ... 1 (Winslow)	20 3.00	3.00
J. D. Gilmour..... 1	2 2.10	2.10
Lester Short 1	2 2.10	2.10
Harold B. Wells..... 1 (Winslow)	20 3.00	3.00
Frank E. Blumberg.. 2	4 4.20	4.20
Alfred Amdahl 1 (Winslow)	20 3.00	3.00
Herman Sanwick 1	2 2.10	2.10
Taxed	\$357.30	\$357.30

Taxed May 2, 1949.

/s/ MILLARD T. THOMAS,
Clerk.

United States of America,
Western District of Washington—ss.

Russell V. Hokanson, being duly sworn, deposes
and says: That he is one of the proctors for the

libelants and cross-respondents in the above entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

/s/ RUSSELL V. HOKANSON.

Subscribed and sworn to before me this 27th day of April, 1949.

[Seal] /s/ STUART W. TODD,
Notary Public in and for the State of Washington,
residing at Seattle.

To: Compania Naviera Limitada, a corporation, and
to Merritt, Summers & Bucey, its proctors.

You Will Please Take Notice that on Monday, the 2d day of May, 1949, at the hour of 9:30 o'clock a.m., application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

TODD, HOKANSON & WHITE,
Proctors for Libelants and
Cross-respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1949.

In the District Court of the United States for the
Western District of Washington, Northern
Division

In Admiralty—No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Libelants,

vs.

THE MOTOR TANKER "URANIA," her engines,
tackle, apparel, furniture and equipment,
Respondent,

COMPANIA NAVIERA LIMITADA, a corpora-
tion,

Claimant.

COMPANIA NAVIERA LIMITADA, a corpora-
tion,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Cross-respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Cause having come on for trial before the
undersigned Judge of the above entitled court sitting
in admiralty on April 7, 1949, upon the allegations
of the libel and answer thereto, and the cross-libel

and answer thereto, and cross-libelant having by oral trial amendment deleted items (1), (9) and (10) of Article IV of its cross-libel, and by written trial amendment having substituted a new item (1) to Article IV of its cross-libel, and the court having approved all of said amendments, and cross-respondents having moved for dismissal of the cross-libel at the conclusion of the testimony adduced in support thereof, and the court having denied said motion save and except as to items (3) and (4) of Article IV of said cross-libel with respect to which cross-respondents' motion to dismiss was granted, and said trial having been concluded on April 18, 1949, and both sides having rested both as to the libel and cross-libel, and the court having heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, and having on April 18, 1949, rendered its oral decision, now makes the following:

Findings of Fact

I.

That at all times herein mentioned, libelants-cross-respondents, E. A. Black and J. J. Featherstone (hereinafter described as libelants), were and now are co-partners doing business under the assumed name and style of Commercial Ship Repair, with an office and place of business in the Port of Winslow, State of Washington.

II.

That the respondent vessel, the Motor Tanker *Urania*, was at all times herein mentioned owned

by claimant-cross-libelant (hereinafter referred to as claimant corporation), Compania Naviera Limitada, a corporation organized and existing under the laws of the Republic of Panama. That said vessel was, at the time of the filing of the libel herein, to-wit, on October 13, 1948, lying afloat in the navigable waters of Puget Sound at Winslow, Washington, and within the jurisdiction of this court, and that the causes herein sued upon are within the admiralty and maritime jurisdiction of this court.

III.

That heretofore and on or about August 4, 1948, at Seattle, Washington, claimant corporation, Compania Naviera Limitada, made and entered into a contract with libelants whereby libelants agreed to furnish to said motor tanker Urania material, labor and services for the repair, alteration and renewal of said vessel, in accordance with specifications then and there agreed upon (Libelant's Exhibit 1, admitted in evidence), for the agreed price of \$40,155.00. That claimant corporation and libelants further agreed at said time and place that an additional item relating to installation on said vessel of a chart room would be performed by libelants for the sum of \$1500.00 if claimant corporation's representative, Harry F. Williams, should order such installation to be made; that pursuant to said agreement said Harry F. Williams ordered said installation, and that the total contract price thereupon was increased to the agreed amount of \$41,655.00. (The contract described in this paragraph is hereinafter referred to as original contract.)

IV.

That pursuant to said original contract, libelants furnished to respondent vessel at libelants' shipyard at Winslow, Washington, all of said material, labor and services in accordance with the specifications therefor in a timely, competent and workmanlike manner, save and except item 36 of the said specifications, relating to the removal of an ammunition storeroom bulkhead, which item was ordered cancelled by claimant corporation by and through its authorized representative, Harry F. Williams, and in lieu of the performance of said item it was agreed between claimant corporation and libelants that certain substitute work of a reasonable and agreed value equal to the value of item 36, should be performed by libelants; that in accordance with said agreement libelants performed the agreed substitute work on said vessel in lieu of item 36, in a timely, competent and workmanlike manner.

V.

That at the time and place of the making of the original contract, claimant corporation, acting by and through its authorized representative, Demetri Antippas, a director of said corporation, advised libelants that Harry F. Williams, a marine surveyor from New York City, who was then and there present, would remain at Winslow as owner's representative and would have full authority to supervise the making of repairs, alterations and renewals to said vessel and was empowered on behalf of claim-

ant corporation to order from libelants, in addition to the items specified by the original contract, such material, labor, services and spare parts relating to the repair, alteration and renewal of said vessel, as he, the said Harry F. Williams, deemed necessary and appropriate, and for all purposes to represent claimant corporation in connection with the repair, alteration and renewal of said vessel by libelants.

VI.

That pursuant to the arrangements made between claimant corporation and libelants and as the work progressed on the original contract, said Harry F. Williams from time to time ordered libelants to furnish additional material, labor and services for the repair, alteration and renewal of respondent vessel and spare parts for said vessel; that all said additional material, labor and services as ordered were furnished by libelants to said vessel in a timely, competent and workmanlike manner, and the price for the same was negotiated between said Harry F. Williams, as owner's representative, and libelants; that \$38,191.00 was the total price agreed upon by said parties for said additional work; that the spare parts ordered for said vessel by Harry F. Williams as owner's representative were timely furnished to said vessel by libelants, and that \$6,920.46 was the total price agreed upon by said parties for said spare parts.

VII.

That the total price for additional material, labor, services and spare parts furnished said vessel by

libelants is in all respects fair and reasonable; that failure, if any, on the part of libelants to accomplish all items listed in job order covering additional work (Libelant's Exhibit 4 admitted in evidence) was by specific order of claimant corporation's representative, Harry F. Williams, and that failure fully to accomplish all items therein listed was equalized by substituted work performed at the request of Harry F. Williams by libelants in lieu of omitted items and by negotiations on total price.

That all items listed on spare parts invoice (Libelant's Exhibit 6 admitted in evidence), including spare boiler coils, were furnished and properly allocated to spare parts in accordance with agreement between Harry F. Williams and libelants, and that the total price therefor was in all respects fair and reasonable.

VIII.

That Harry F. Williams on October 8, 1948, signed and approved invoices as owner's representative covering all labor, material, services and spare parts furnished by libelants to respondent vessel, in the total amounts as follows:

Original contract	\$41,655.00
Additional work	38,191.00
	<hr/>
	\$79,846.00
State Sales Tax—3%	2,392.68
	<hr/>
	\$82,238.68
Spare parts	6,920.46
State Sales Tax—3%	207.61
	<hr/>
Total	\$89,366.75

That said Harry F. Williams had authority on behalf of claimant corporation to order said additional work, spare parts, substituted work and to negotiate and approve the prices therefor. That said Harry F. Williams had authority on behalf of claimant corporation as its representative to approve and accept all labor, material, services and spare parts furnished by libelants to said vessel and that said Harry F. Williams did approve and accept the same on October 8, 1948. That in addition thereto said vessel was approved and passed for classification by American Bureau of Shipping on October 9, 1948, and that all labor, material, services and spare parts furnished by libelants to said vessel were accepted and approved by the master of said vessel prior to October 13, 1948.

IX.

That even if limitations had been imposed by claimant corporation upon the authority of Harry F. Williams to act for it in all matters connected with the repair, alteration and renewal of respondent vessel by libelants (and this court expressly finds that no such limitations were imposed), this court would find and does find that by reason of the relationship existing between libelants and claimant corporation, the actual conduct of claimant corporation and its agents, the failure of claimant corporation to communicate to libelants the limitations, if any, upon the authority of said Harry F. Williams, and further, by reason of the custom and practice with respect to the authority of marine surveyors

acting as owners' representatives prevailing in the Puget Sound area at all times herein mentioned, libelants were entitled to and did deal with and rely upon the acts of the said Harry F. Williams as the acts of claimant corporation.

X.

That of the total amount owing by claimant corporation to libelants covering all material, labor, services and spare parts furnished to respondent vessel as hereinbefore described, including State sales tax, to-wit, the total sum of \$89,366.75, claimant corporation has paid the libelants the sum of \$25,000 only, which payment was made on October 4, 1948. That there was due and owing to libelants by claimant corporation on October 13, 1948, the sum of \$64,366.75, no part of which balance has been paid to date, and that libelants, on said date, had a valid claim of maritime lien upon respondent vessel for the amount due; that thereafter, on October 15, 1948, upon the filing herein of a release and cost bond in the sum of \$80,000.00, executed by claimant corporation as principal and National Surety Corporation as surety, conditioned to abide by and answer final decree in this cause, respondent vessel was released from arrest.

XI.

That any provision for completion of work under the specifications of the original contract within eighteen working days, as alleged by claimant corporation in its cross-libel, was expressly waived by

claimant corporation on or about August 4, 1948; that no time was fixed by the parties within which all work specified under original contract together with additional work and spare parts ordered thereafter was to be completed; that all of said work was completed in a reasonable time and that claimant corporation has failed to sustain proof as to allegations of delay in completion of work or of damage for expenses during alleged delay or loss of profits by reason of alleged delay at Winslow, Washington.

XII.

That all work performed by libelants on the tele-motor and Clayton Boiler of respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice, and was accepted and approved by claimant corporation; that claimant corporation has not sustained proof as to allegations of damage allegedly caused by libelants' malperformance concerning such work.

XIII.

That all work performed by libelants' employees on main engine of respondent vessel, save that done by riggers, was done at the direction of and under the supervision and control of the chief engineer of respondent vessel; that with respect to work on main engine of said vessel libelants undertook on their own responsibility no duty to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer of said vessel

directed in pursuance of contract stipulation in that connection; that all work relating to main engine performed by libelants' employees as hereinabove described was done in a competent and workmanlike manner and was accepted and approved by claimant corporation; that claimant corporation has failed to sustain proof as to cause of main engine breakdowns and that whatever the cause or causes thereof were, claimant corporation has failed to sustain proof of allegations that said breakdowns and the damages, if any, resulting therefrom occurring subsequent to departure of vessel from Puget Sound were caused by any alleged malperformance by libelants or their employees.

XIV.

That the oral decision of this court in this cause announced on April 18, 1949, is by this reference made a part of these findings of fact as though fully set forth herein.

Done In Open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,

Judge.

From the foregoing Findings of Fact, the court now makes and enters herein its

Conclusions of Law

I.

That libelants are entitled to a decree against Compania Naviera Limitada, of Panama, a cor-

poration, the owner and claimant herein of the respondent, Motor Tanker Urania, her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, for the sum of \$64,366.75, together with libelants' costs and disbursements as taxed herein, with interest as provided in the decree herein.

II.

That the claimant corporation is not entitled to recover from libelants under its cross-libel and said cross-libel should be dismissed with prejudice.

Done In Open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,

Judge.

Presented by:

/s/ RUSSELL V. HOKANSON,

Of Proctors for Libelants and
Cross-respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

In Admiralty No. 15266

E. A. BLACK, and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Libelants,

vs.

THE MOTOR TANKER "URANIA", her en-
gines, tackle, apparel, furniture and equipment,
Respondent,

COMPANIA NAVIERA LIMITADA,
a corporation,

Claimant,

COMPANIA NAVIERA LIMITADA,
a corporation,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-
partners, doing business under the assumed
name and style of Commercial Ship Repair,
Cross-respondents.

FINAL DECREE

This cause having been heard on the pleadings
and proofs before the undersigned, one of the judges
of the above entitled Court, and both sides having

in due course on the 18th day of April, 1949, concluded and rested on both the libel and cross-libel herein, and the cause having been argued and submitted by the advocates for the respective parties and due deliberation having been had, and the Court being fully advised in the premises and having delivered its oral opinion at the conclusion of the trial, and having heretofore made and entered its Findings of Fact and Conclusions of Law, it is therefore

Ordered, Adjudged and Decreed that this Court makes and adopts as its Findings of Fact and Conclusions of Law the said Findings and Conclusions as heretofore entered in this cause; and it is further

Ordered, Adjudged and Decreed that the libelants, E. A. Black and J. J. Featherstone, copartners, doing business under the assumed name and style of Commercial Ship Repair, recover of and from Compania Naviera Limitada, of Panama, a corporation, the owner and claimant herein of the respondent, Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, the sum of \$64,366.75, together with Libelants' costs and disbursements taxed herein in the sum of \$357.30, amounting in all to the total sum of \$64,724.05, with interest thereon at the rate of 6% per annum from May 5, 1949, until paid; and it is further

Ordered, Adjudged and Decreed that unless this

decree be satisfied within ten (10) days after service of a copy of this decree with notice of its entry upon proctors for claimant corporation, and upon its surety, to-wit, National Surety Corporation, which is the surety upon said claimant's release and cost bond herein, the clerk of this court without further notice shall enter summary judgment against said surety, after which execution may issue forthwith if this decree shall not have been satisfied or superseded; and it is further

Ordered, Adjudged and Decreed that the cross-libel herein of Compania Naviera Limitada, a corporation, against E. A. Black and J. J. Featherstone, copartners, doing business under the assumed name and style of Commercial Ship Repair, be and the same is hereby dismissed with prejudice; and it is further

Ordered, Adjudged and Decreed that the stipulation for costs heretofore entered on behalf of libelants be and the same is hereby discharged and released.

Done in open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,

Judge.

Presented by:

/s/ RUSSELL V. HOKANSON,

Of Proctors for Libelants-
Cross-Respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

EXCEPTIONS TO FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECREE

Claimant and cross-libelant excepts to each of the findings of fact made and signed by the court upon the grounds that each of such findings is not supported by and is contrary to the greater weight and preponderance of the evidence and/or is not material and, insofar as it constitutes a conclusion of law, is not warranted in law, to-wit:

(1) That portion of finding No. III reading as follows: "If claimant corporation's representative, Harry F. Williams, should order such installation to be made; that pursuant to said agreement said Harry F. Williams ordered said installation."

(2) Finding No. IV, and particularly the following portions thereof:

(a) That portion thereof to the effect that all of said material, labor and services were furnished therefor in a timely, competent and workmanlike manner.

(b) That portion thereof relating to the removal of an ammunition storeroom bulkhead to the effect that removal of such bulkhead was ordered cancelled by claimant corporation or by its representative.

(c) That portion thereof relating to the performance of agreed substitute work and that the substitute work was performed in a timely, competent and workmanlike manner.

(3) Finding No. V, and particularly that por-

tion thereof to the effect that claimant corporation advised libelants that Harry F. Williams would represent said claimant corporation for all purposes in connection with the repair, alteration and renewal of said vessel by libelants.

(4) Finding No. VI, and particularly the following portions thereof:

(a) That portion thereof stating that all said additional labor, material and services as ordered were furnished by libelants to said vessel in a timely, competent and workmanlike manner.

(b) That portion thereof stating that "the price for the same was negotiated between said Harry F. Williams as owner's representative and libelants."

(c) That portion thereof stating that "\$30,-191.00 was the total price agreed upon by said parties for said additional work."

(d) That portion thereof stating that "the spare parts ordered for said vessel by Harry F. Williams as owner's representative were timely furnished to said vessel by libelants."

(e) That portion thereof stating "that \$6,920.46 was the total price agreed upon by said parties for said spare parts."

(5) Finding No. VII, and in particular the following portions thereof:

(a) That portion thereof stating "that the total price for additional material, labor, services and spare parts furnished said vessel by libelants is in all respects fair and reasonable."

(b) That portion thereof to the effect that any failure on the part of libelants to accomplish all

items listed in job orders was by reason of specific order of claimant corporation's representative.

(c) That portion thereof to the effect that substituted work was performed at the request of Harry F. Williams in lieu of omitted items and by negotiations on total price.

(d) That portion thereof to the effect that all items listed in spare parts invoice were furnished and properly allocated in accordance with agreement between representatives of claimant corporation and libelants.

(e) That portion thereof stating "that the total price therefor was in all respects fair and reasonable."

(6) Finding No. VIII, and in particular the following portions thereof:

(a) That portion thereof stating "that said Harry F. Williams had authority, on behalf of claimant corporation, to order said additional work, spare parts, substituted work, and to negotiate and approve the prices therefor.

(b) That portion thereof to the effect that said vessel was accepted and approved by the master prior to October 13, 1948.

(7) Finding No. IX, and particularly the following portions thereof:

(a) That portion thereof to the effect that no limitations had been imposed by claimant corporation upon the authority of Harry F. Williams to act for it in all matters connected with the repair, alteration and renewal of respondent vessel by libelants.

(b) That portion thereof to the effect that by reason of the relationship existing between libelants and claimant corporation, the actual conduct of claimant corporation and its agents, the failure of claimant corporation to communicate to libelants the limitations, if any, upon the authority of said Harry F. Williams, libelants were entitled to and did deal with and rely upon the acts of said Harry F. Williams as the acts of said claimant corporation.

(c) That portion thereof to the effect that by reason of the custom and practice with respect to the authority of marine surveyors acting as owners' representatives prevailing in the Puget Sound area at all time herein mentioned, libelants were entitled to and did deal with and rely upon the acts of said Harry F. Williams as the acts of claimant corporation.

(8) Finding No. X, and particularly:

(a) That portion thereof to the effect that there was due and owing to the libelants by claimant corporation on October 13, 1948, the sum of \$64,366.75.

(b) That portion thereof to the effect that libelants have a valid claim of maritime lien upon respondent vessel for the amount due.

(9) Finding No. XI, and particularly the following portions:

(a) That portion thereof to the effect that any provision for completion of work under the original contract within eighteen working days was expressly

waived by claimant corporation on or about August 4, 1948.

(b) That portion thereof to the effect that all of said work was completed in a reasonable time and that claimant corporation has failed to sustain proof as to allegations of delay in completion of work or of damage for expense during alleged delay or loss of profits by reason of alleged delay at Winslow, Washington.

(10) Finding No. XII, and particularly the following portions:

(a) That portion thereof stating "that all work performed by libelants on the telemotor and Clayton boiler of respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice.

(b) That portion thereof to the effect that claimant corporation has not sustained proof as to allegations of damage allegedly caused by libelants' malperformance concerning such work.

(11) Finding No. XIII, and particularly the following portions thereof:

(a) That portion thereof to the effect that all work performed by libelants' employees on the main engine was done at the direction of and under the supervision and control of the chief engineer.

(b) That portion thereof to the effect that libelants undertook on their own responsibility no duty to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer of said vessel directed.

(c) That portion thereof to the effect that all

work relating to main engine performed by libelants' employees was done in a competent and workmanlike manner and was accepted and approved by claimant corporation.

(d) That portion thereof to the effect that claimant corporation has failed to sustain proof as to the cause of the main engine breakdowns.

(e) That portion thereof to the effect that claimant corporation has failed to sustain proof of allegations that said breakdowns and damages were caused by any alleged malperformance of libelants or their employees.

(12) Claimant and cross-libelant excepts to finding No. XIV in that it incorporates therein the court's oral decision made on April 18, 1949, upon the grounds that said oral decision otherwise has been made a part of the record in this cause and its incorporation by reference in said findings of fact is improper, not in accordance with prescribed admiralty rules and practice, creates ambiguity, redundancy and confusion, and constitutes an unnecessary encumbrance of the record.

(13) Claimant and cross-libelant excepts to all findings of fact contained in the court's oral decision of April 18, 1949; upon the ground that such findings of fact are not supported by, and are contrary to, the greater weight and preponderance of the credible evidence.

Exceptions to Conclusions of Law

Claimant and cross-libelant excepts to each of the following conclusions of law made and signed by

the court on the ground that it is not supported by and is contrary to the greater weight and preponderance of the credible evidence, and is not warranted in law, to-wit:

(1) To conclusion of law No. I stating that libelants are entitled to a decree against respondent vessel, the Motor Tanker *Urania*, her engines, tackle, apparel, furniture and equipment, and against claimant corporation, *Compania Naviera Limitada*, the owner of said vessel, for the sum of \$64,366.75, together with their costs and disbursements as taxed herein.

(2) To conclusion of law No. II dismissing the cross-libel herein with prejudice, and to the conclusion that claimant corporation is not entitled to recover thereon.

(3) Claimant and cross-libelant excepts to all conclusions of law contained in the Court's oral decision of April 18, 1949; upon the grounds that such conclusions of law are not supported by, and are contrary to, the greater weight and preponderance of the credible evidence, and that they are not warranted in law.

Exceptions to Final Decree

Claimant and cross-libelant excepts to the decree signed and entered by the court, particularly to the following portions thereof:

(a) That portion thereof awarding recovery of and from the respondent vessel *Urania*, and her owner and stipulator for cost and value, to-wit, claimant corporation, *Compania Naviera Limitada*,

and each of them, in the sum of \$64,366.75, together with libelants' costs and disbursements taxed herein in the sum of \$....., with interest thereon at the rate of six per cent (6%) per annum from date hereof until paid; and awarding recovery thereof against the surety of claimant corporation, National Surety Corporation, and authorizing summary judgment against said surety if said decree be not satisfied within ten days after service of copy of the decree and notice as therein provided.

(b) That portion thereof dismissing with prejudice the cross-libel herein.

Dated this 6th day of May, 1949.

MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

Receipt of copy acknowledged.

The foregoing exceptions allowed this 7th day of May, 1949.

/s/ JOHN C. BOWEN,
U.S. District Judge.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT AND CROSS-LIBELANTS'
REQUEST FOR FINDINGS, ETC.

To The Honorable Judge Of The Above Entitled
Court:

Claimant and Cross-libelant herewith submits Proposed Findings of Fact, Conclusions of Law and Decree, which it requests to the Court to make, sign and enter herein, copies of which, marked respectively Claimant and Cross-Libelant's Proposed Findings of Fact and Conclusions of Law, and Claimant and Cross-Libelant's Proposed Decree, are hereto attached and made a part hereof.

Respectfully submitted,

MERRITT, SUMMERS &
BUCEY,

By /s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

The foregoing Request, and the Proposed Findings of Fact, Conclusions of Law and Decree therein referred to, were on this day submitted to the undersigned Judge of the above entitled court, prior to the signing by said Judge of the Findings of Fact, Conclusions of Law and Decree this day signed and entered herein; and said request thereupon was refused; to which refusal Claimant and Cross-Libelant excepts, and its exceptions are allowed.

Done in open court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,

U.S. District Judge.

Receipt of copy acknowledged.

[Title of District Court and Cause.]

CLAIMANT AND CROSS-LIBELANTS' PRO-
POSED FINDINGS OF FACT AND CON-
CLUSIONS OF LAW

The above entitled cause having duly come on for trial before the undersigned Judge of the above entitled court, sitting in Admiralty, on April 7, 1949, upon the allegations of the libel and answer thereto and the cross-libel and answer thereto, and cross-libelant having by oral trial amendment deleted items 1, 9 and 10 of paragraph IV of its cross-libel, and having, by written trial amendment, substituted a new item (1) in paragraph IV of its cross-libel, and the Court having approved all of said amendments, and said trial having been continued from time to time and having been finally concluded on April 18, 1949, and both sides having rested as to the libel and cross-libel, and the Court having heard and considered the evidence and the arguments of proctors, and being fully advised in the premises, and having on April 18, 1949, announced its oral decision, now makes the following

Findings of Fact

I.

That at all times herein mentioned libelants and

cross-respondents E. A. Black and J. J. Featherstone were and now are copartners doing business under the assumed name and style of Commercial Ship Repair, with an office and place of business at or near the port of Winslow, State of Washington.

II.

That the respondent vessel, the motor tanker "Urania", was at all times herein mentioned owned by claimant and cross-libelant, Compania Naviera Limitada, a corporation organized and existing under and by virtue of the laws of the Republic of Panama. That said vessel was at the time of the filing of the libel herein, to-wit, on the 13th day of October, 1948, lying afloat in the navigable waters of Puget Sound, at or near Winslow, Washington, and was within the jurisdiction of this Court, and that the causes herein sued upon are within the admiralty and maritime jurisdiction of this Court.

III.

That on or about the 4th day of August, 1948, at Seattle, Washington, claimant corporation, Compania Naviera Limitada, by and through Demetri Antippas, one of its officers, entered into a contract with libelants whereby libelants agreed to furnish to said motor tanker "Urania" material, labor and services for the repair, alteration and renewal of said vessel in accordance with specifications then and there agreed upon. That claimant corporation and libelants further agreed at said time and place that an additional item relating to installation on

said vessel of a chart room would be performed by libelants for the additional sum of \$1500, and that the total contract price, including said additional sum, was in the agreed amount of \$41,655.

IV.

That during the period beginning on or about the 4th day of August, and ending on or about the 14th day of October, 1948, the motor tanker "Urania" was at the yard of libelants and cross-respondents, under agreement for the faithful performance by them of aforesaid repairs, renewals, alterations and additions, to be completed in the period of 18 working days. That Harry F. Williams of New York was in attendance upon the vessel as owner's representative during these repairs. That said Harry F. Williams had previously acted in a similar capacity for said owner, and that the authority of the said Harry F. Williams was to supervise said repairs, renewals and alterations, and to act as intermediary between the vessel's officers and crew and the shipyard.

V.

That certain items of the original contract were not performed although charge was made for such items. That other items of work under the original contract were performed in an inefficient and unreliable manner. That the departure of the vessel from said yard was unduly delayed. That the first voyage of the vessel after such departure was interrupted by breakdowns, necessitating deviation

and towage to a port of refuge. That further and corrective repairs were required by the vessel, and that additional loss of time and expense to the owner and loss of profit on the vessel were incurred.

VI.

That during the course of work on the original contract Harry F. Williams, as owner's representative, was empowered by said claimant corporation to order from libelants such additional material, labor and services as he deemed necessary and appropriate. That as was his usual custom in representing claimant corporation, no order for major repairs, replacements or materials was placed by the said Harry F. Williams without consultation with and upon instructions from claimant corporation, and that by custom of the trade and agreement of the parties final price for such materials, labor and services was to be negotiated by claimant corporation and libelants.

VII.

That under such arrangement the said Harry F. Williams did from time to time order additional material, labor and services from libelants. That a price of \$38,191.00 was submitted to the said Harry F. Williams for additional material, labor and services, which figure was objected to on October 8, 1948 by the said Harry F. Williams as being excessive. That the said Harry F. Williams advised that said submitted price was excessive in the

amount of \$6425.00. That a figure of \$6920.46 was on October 8, 1948 submitted by libelants to the said Harry F. Williams as the price for spare parts, which figure was likewise objected to as excessive, since said price included a charge already figured in upon the original agreed contract price in the amount of \$900.00. That the said Harry F. Williams did not approve either of said figures, but instead proceeded to New York to advise claimant corporation with regard thereto. That the sum of \$31,766.00 does represent the reasonable value of the extra repairs and alterations furnished by the libelants herein, and the sum of \$6,020.46 represents the reasonable cost of spare parts actually furnished by libelants to respondent vessel, as established by a preponderance of the evidence herein.

VIII.

That on or about the 8th day of October, 1948, the said Harry F. Williams, as owner's representative, did sign invoices covering the figures submitted by libelants, and referred to in the previous paragraph, but that the approval contained thereon was limited to work having been done and was not intended as approval as to price. That it was understood that this approval did not relieve the libelants from responsibility arising from latent defects which might later develop as the result of materials and spare parts furnished and labor performed by employees of libelants in the repair and alteration of the vessel. That after the said Harry

F. Williams left for New York work was still being carried out by libelants on the motor tanker "Urania", including work under the original contract, which work was not in fact completed until October 13, 1948.

IX.

That on or about the 4th day of October, 1948, claimant corporation made a payment of \$25,000 as a progress payment. That said progress payment was not provided for by the original contract, and was not in any way required to be made by claimant corporation.

X.

That work performed by employees of libelants on the Clayton boiler, telemotor, and main engine was not completed in a competent and workman-like manner, and that the testing done was not in accordance with the recommendations of the manufacturers of the parts thereof, and that the tests made were ineffective to disclose defects in said parts.

XI.

That as a result of the failure of libelants to perform their obligations to repair said motor tanker "Urania", a breakdown occurred off Port Angeles on the 16th day of October, 1948, requiring additional repairs and causing delay to the vessel and resulting expense and loss of profits. That subsequent breakdowns occurred at sea near Manzanillo, Mexico, on the 26th day of October, 1948, and again while said motor tanker was en route from

Manzanillo to San Pedro, to-wit, on the 5th day of November, 1948, with like results. That the breakdown occurring off Port Angeles, Washington, on October 16, 1948, was caused by failure of the telemotor steering system, attributable to inefficient services, unreliable labor, and defective materials furnished in the overhaul of said system by cross-respondents' ship repair yard; that the subsequent breakdowns of the vessel at sea on October 26th and November 5th, 1948, were attributable to a breakdown of the main engine caused by inefficient services, unreliable labor and defective material furnished by cross-respondent during the course of repairs and overhaul to the vessel's main engine at cross-respondent's Winslow shipyard in August, September and October, 1948.

XII.

That as a result of said failure of libelants to perform their obligation to repair said vessel in a competent and workmanlike manner, cross-libelant suffered damages as follows:

- | | | |
|-----|--|-----------|
| (1) | Repairs to Clayton boiler and generator at Long Beach..... | \$ 678.86 |
| (2) | Removal of ammunition bulkhead not effected | 275.00 |
| (3) | Expense incurred during delay at Winslow, Washington (16 days at \$246 per day)..... | 3936.00 |
| (4) | Loss of profits during delay at Winslow, Washington (16 days at \$250 per day) | 4000.00 |

(5)	Telemotor repairs at Port Angeles, Washington (including 2 men, one surveyor, and air transportation) ..	262.51
(6)	Deviation to Port Angeles, Washington, for telemotor repairs.....	310.00
(7)	Towage after breakdown from Manzanillo, Mexico, to San Pedro, California	4286.00
(8)	Engine repairs at Long Beach, California	4475.00
(9)	Additional fuel consumed on account of deviation and delay for repairs, and resupplied at San Pedro, California	974.00
(10)	Disbursements (agency) at Manzanillo	969.00
(11)	Disbursements (agency) at Los Angeles	1911.00
(12)	Expenses of vessel during repairs at Long Beach, California.....	7252.00
(13)	Loss of profits during corrective repairs (28 days at \$250 per day)	7000.00

That the amounts shown opposite each of the above subparagraphs represent the reasonable and actual cost, expense or loss sustained by the cross-libelant, proximately resulting from the negligence, inefficient service, unreliable labor, delay, and defects in material furnished by cross-respondents' shipyard as established by the preponderance of the evidence.

Done in open court this day of May, 1949.

.....,

U.S. District Judge.

From the foregoing Findings of Fact the Court now makes and enters herein its

Conclusions of Law

I.

That libelants are entitled to a decree against claimant corporation, the owner of said vessel, for the sum of \$54,441.46. That the aforesaid sum represents the agreed amount of \$41,655.00 for contract repairs and alterations, plus the reasonable value of the extra repairs and alterations in the sum of \$31,766.00, plus the reasonable value of spare parts furnished to the vessel by the libelants in the sum of \$6020.46, making a total of \$79,441.46, from which sum is deducted the progress payment of \$25,000 voluntarily made by the claimant to libelants herein.

II.

That cross-libelant is entitled to a decree against cross-respondents in the amount of \$36,329.37 for damages suffered by cross-libelant resulting from the failure of cross-respondents to perform their duty to repair, alter and renew the respondent vessel in a competent and workmanlike manner.

III.

That the damages awarded to claimant and cross-libelant may be offset against the amount adjudged to be due libelants from claimant.

Done in open court this day of May, 1949.

.....,

U.S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant
Cross-Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT AND CROSS LIBELANT'S
PROPOSED FINAL DECREE

This cause having been heard on the pleadings and proofs before the undersigned, one of the judges of the above entitled Court, and both sides having in due course on the 18th day of April, 1949, concluded and rested on both the libel and cross-libel herein, and the cause having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, and the Court being fully advised in the premises and having delivered its oral opinion at the conclusion of the trial, and having heretofore made and entered its Findings of Fact and Conclusions of Law, it is therefore

Ordered, Adjudged and Decreed that this Court makes and adopts as its Findings of Fact and Conclusions of Law the Findings and Conclusions as heretofore proposed by the claimant and cross-libelant herein and entered in this cause; and it is further

Ordered, Adjudged and Decreed that the libelants, E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, recover of and from Compania Naviera Limitada, of Panama, a corporation, the owner and claimant herein of the respondent Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, the sum of \$54,441.46; and it is further

Ordered, Adjudged and Decreed that cross-libelant, Compania Naviera Limitada, a corporation, recover of and from E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, the sum of \$36,329.37, together with cross-libelant's costs and disbursements taxed herein; and it is further

Ordered, Adjudged and Decreed that damages awarded to claimant and cross-libelant may be offset against the amount adjudged to be due libelants from claimant; and it is further

Ordered, Adjudged and Decreed that unless this decree be satisfied within ten (10) days after service of a copy of this decree with notice of its entry upon proctors for claimant corporation, and upon its surety, to-wit, National Surety Corporation, which is the surety upon said claimant's release and cost bond herein, the Clerk of this Court, without further notice, shall enter summary judgment against said

surety, after which execution may issue forthwith if this decree shall not have been satisfied or superseded.

Done in open court this day of May, 1949.

.....,

U.S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,

Of Proctors for Claimant and
Cross-libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT'S AND CROSS-LIBELANT'S MO-
TION FOR AN ORDER FIXING COST
AND SUPERSEDEAS BOND ON APPEAL

Comes now the claimant and cross-libelant corporation, Compania Naviera Limitada, of Panama, and in contemplation of taking an appeal from the Final Decree in the above entitled cause made and entered by this court on the 7th day of May, 1949, does hereby move the court for an order approving the Release and Cost Bond heretofore filed herein by claimant on October 15, 1948, with claimant corporation as principal and the National Surety Corporation as surety, in the sum of \$80,000.00, to stand as a Cost and Supersedeas Bond on the above

appeal or, in the alternative, that the court enter an order fixing the amount of Cost and Supersedeas Bond to be posted by claimant and cross-libelant on appeal from said Final Decree herein.

This motion is based upon the records and files in this cause and upon the affidavit of Charles B. Howard attached hereto.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant.

United States of America,
State of Washington,
County of King—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says:

That I am an attorney at law and a member of the firm of Merritt, Summers & Bucey, proctors for the claimant and cross-libelant in this cause.

That since entry of Final Decree in said cause on May 7, 1949, the claimant-cross libelant corporation, Compania Naviera Limitada, of Panama, has instructed and authorized the firm of Merritt, Summers & Bucey to take and prosecute an appeal from the Final Decree entered by the trial court in this cause to the Circuit Court of Appeals for the Ninth Circuit. That Notice of Appeal and Assignment of Errors will be served and filed in said cause by the 16th day of May, 1949.

That it is necessary to have the amount of Supersedeas Bond determined and approved at this time in order to avoid execution on the judgment in the Final Decree during the pendency of the appeal. That the amount of said Cost and Release Bond filed herein on October 15, 1948, is \$80,000.00 and that said bond is sufficient in amount and adequate in its terms to serve as a Cost and Supersedeas bond on appeal, since the amount of the judgment awarded by the Final Decree, including costs, is in the sum of \$64,724.05, with interest thereon at the rate of six per cent per annum from May 5, 1949, until paid.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 11th day of May, 1949.

[Seal] /s/ G. H. BUCEY,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 11, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court:

To E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, being the Libelants and Cross-Respondents above named, and

To Todd, Hokanson & White (formerly Langlie & Todd), Proctors for Libelants and Cross-Respondents:

Notice Is Hereby Given that Compania Naviera Limitada, a corporation, claimant and cross-libelant hereinabove named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from that certain final decree in the above entitled action entered upon the 7th day of May, 1949, by the United States District Court for the Western District of Washington, Northern Division, wherein the said libelants were awarded judgment on the claims in their libel against Compania Naviera Limitada, of Panama, a corporation, as the owner and claimant of the respondent Motor Tanker "Urania" in the sum of \$64,366.75, together with libelants' costs and disbursements taxed herein in the sum of \$357.30, amounting in all to the total sum of \$64,724.05, with interest thereon at the rate of six per cent (6%) per annum from May 5, 1949, until paid, and wherein the cross-libel of Compania

Naviera Limitada, a corporation, against E. A. Black and J. J. Featherstone, co-partners doing business under the assumed name and style of Commercial Ship Repair, was dismissed with prejudice.

Dated this 16th day of May, 1949.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 16, 1949.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the Claimant and Cross-libelant in the above entitled and numbered cause and files the following Assignment of Errors upon which it will rely in presentation of the appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree made and entered by the Honorable John C. Bowen, District Court Judge of the United States District Court for the Western District of Washington, Northern Division, on the 7th day of May, 1949.

The trial court erred as follows:

(1) In finding that Harry F. Williams was empowered by claimant corporation to represent said

corporation for all purposes in connection with the repair, alteration and renewal of respondent vessel by libelants at their shipyard at Winslow, Washington.

(2) In finding that, by reason of the actual conduct of claimant corporation and the failure of claimant corporation to communicate limitations upon the authority of Harry F. Williams to libelants, and the custom and practice in the Puget Sound area with respect to the authority of marine surveyors acting as owners' representatives, the libelants were entitled to deal and rely upon the acts of Harry F. Williams with respect to the accounts of libelants as the acts of claimant corporation.

(3) In finding that Harry F. Williams did approve the accounts of libelants as to the amounts and prices shown on the invoices for contract work, additional work and spare parts furnished to the respondent vessel.

(4) In finding that the prices on said invoices for additional material, labor, services and spare parts furnished respondent vessel by libelants were in all respects fair and reasonable.

(5) In finding that the charge for spare boiler coils set forth in the spare parts invoice (Libelants' Exhibit #6) was properly allocated to spare parts; and in failing to find that such item was a duplication of charges under additional work charges (Libelants' Exhibits #4 and #5) on the Clayton boiler.

(6) In finding that work performed by libelants on the Clayton boiler aboard respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice; and in failing to find to the contrary, and that the failure in operation and the damage sustained to the said Clayton boiler was caused by malperformance or nonperformance of libelants' obligations under the additional work specifications.

(7) In finding that work performed by the libelants on the telemotor steering system aboard the respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice; and in failing to find that the breakdown of said telemotor system near Port Angeles, Washington, was due to failure of the libelants to properly perform their obligations under the original contract specifications to open up, test and adjust the telemotor, and report any deficiencies found therein to claimant's representative.

(8) In finding that all work done on the main engine of respondent vessel, save that work done by riggers, was done at the direction of and under the supervision and control of the respondent vessel's chief engineer, and that libelants (cross-respondents) undertook no duty on their own responsibility to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer directed in pursuant to contract stipulation; and in finding that all of the work performed by libelants' employees on the main en-

gine of the respondent vessel was done in a competent and workmanlike manner, and that it was accepted and approved by claimant corporation (cross-libelant).

(9) In finding that claimant corporation (cross-libelant) failed to sustain the burden of proof as to the cause of the main engine breakdowns off the west coast of Mexico on October 26 and November 5, 1948; and in the failure of the Court to find that said breakdowns were caused by defective workmanship and material furnished to respondent vessel by libelants under the original contract and additional work specifications.

(10) In the failure of the trial Court to find that the breakdowns of the main engine on October 26 and November 5, 1948, were proximately caused by the malperformance or nonperformance of libelants' obligations under the additional work specifications on respondent vessel by reason of the improper testing and negligence in repairing or failure to repair leaks existing in the lubricating oil cooler installed on said main engine, resulting in salt water contamination of the lubricating oil which, in turn, caused galling of the vertical gears on the main engine and resulted in said breakdowns of the main propulsion engine on the respondent vessel while at sea.

(11) In ruling that the lubricating oil cooler offered by cross-libelant on rebuttal as an exhibit (cross-libelant's identification A-29) had not been properly identified and was not admissible in evi-

dence, for the purpose offered, to establish the inaccuracy of opinions expressed by expert witnesses called by cross-respondents in an effort to prove that leaks could not have existed in this type of lubricating oil cooler at the particular points claimed by cross-libelant through its witnesses. The offer of this identification A-29 was objected to by counsel for cross-respondent as follows:

“Mr. Hokanson: At this point, with reference to the attempt to introduce this exhibit into evidence, I would like to call the Court’s attention to an order which the Court signed on the 9th day of March, 1949, in this cause wherein on Page 3 of the order, the cross-libelants are directed under paragraph 2:

“To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects:

“(a) Any and all engine parts or other parts of the Motor Tanker ‘Urania’ removed from said vessel after October 15, 1948, for the purposes of introducing the same into evidence as exhibits upon the trial of the above entitled cause.”

“I submit that had counsel intended to introduce this exhibit in this cause, he was under obligation to allow us the opportunity to inspect this under

the terms of this order, and that it is improper at this late stage of the trial to undertake identification and introduction of it.

“Our witnesses have all been dismissed. This matter was gone over when Mr. Antippas was here. He had an opportunity when he was here to identify it. We were never given the opportunity to see the exhibit. We were informed that it was allegedly here—the alleged cooler was here at about ten minutes of twelve on Thursday, just prior to the resting of cross-libelant’s case.

“No offer was made to produce it at the time we understook to introduce a cooler in lieu of it to establish the type of construction, and I submit, your Honor, that it is rather late in the case now, particularly in view of the order signed, to undertake to introduce what is alleged to be the cooler from the *Urania*, which in any case must be hearsay, because there is not present, to my knowledge, anyone from the vessel to establish that is the cooler which is in issue here which was on this vessel in October, 1948, and has been on the vessel at all times since.

“The proof is such that I submit counsel is wasting the Court’s time in undertaking to identify it now.

* * *

“The Court: I do not think that the exhibit has been sufficiently identified to be admitted over objection.

“One reason I think it is lacking in identification necessary to meet the objection is that it should have had some person who took it from the *Urania*, identified the identity of it with the identity of the article shipped by the carrier which is alleged to have carried it, and then the identity should have been unmistakably and properly connected up from the time it was on the vessel until it arrived here in court, when it did arrive.

“I do not think, over objection, that that has been sufficiently done.

“I also feel the possibility of there being some prejudice to the cross-respondents in connection with it. I think if it had been produced in accordance with the Court’s order in the proper time and at a time when they could make use of and gain information from it, they might have had an opportunity to have made a more timely inspection of it.

“That last observation causes the Court to feel that the possible prejudice to cross-respondents makes it important for the Court to require, since the objection has been made by cross-respondents, that the exhibit be properly and legally identified.

“The objections of cross-respondent to the identification of A-29 is and are sustained.

“Mr. Howard: If the Court please, would you allow an exception on that ruling?

“The Court: Exception allowed.

“Mr. Howard: At this time, I will also offer Respondent’s Exhibit A-30 for Identification in support of the offer which has heretofore been made on A-29.

“Mr. Hokanson: I object to the offer.

“The Court: Sustained.

“Mr. Howard: An exception, if the Court please.

“The Court: Allowed.

“Mr. Howard: At this time, I again renew my application on behalf of cross-libelant that this evidence be received in the record under Admiralty Rule 46-B, over objection that has been made and ruled upon by the Court.”

The offer of proof as to this exhibit, made by proctor for cross-libelant, was as follows:

“Mr. Howard: I make an offer of proof by this exhibit, which has been marked for identification, that the gasket and cover do not cover the soldered seam between the core and the housing of the Harrison type heat exchanger model aboard the tanker *Urania*, so that the assumption which the witness Mr. Gilmore was making and which, if the Court please, was also made by the witness Blumberg who testified Saturday and this morning, that leaks could not occur because of the gasket covering the seam—I offer to prove by this exhibit that that is a physical impossibility, and that the heat exchanger would speak for itself in that respect.”

(12) In ruling that photostatic copy of charter party on respondent vessel (cross-libelant’s identi-

fication A-28) identified by witness Demetri Antipapas, and his testimony as to profits under such charter party, which identification and testimony were offered by cross-libelant as proof of earnings of the vessel on charter voyage after the voyage upon which the breakdown occurred, were not admissible in support of cross-libelant's claim for loss of profits during periods of loss of use of the respondent vessel due to breakdowns alleged to have been caused by defective workmanship and materials furnished by libelants. Offer of identification A-28 and testimony in support thereof were objected to by one of cross-respondents' proctors as follows:

“Mr. White: May we object upon the ground, first, that there is no foundation laid that a boat could possibly have been chartered here which would support such testimony as this; and secondly, that this was a different time, under different conditions, with different parties, carrying a different product.

“I submit to the Court that under those circumstances this could have practically no weight as far as showing any loss of profits is concerned.

* * *

“Mr. White: I object to that, your Honor, on the ground that what the charter market might have been on the East Coast in December would have no bearing upon the issues in this case, since if there is any loss of profits it is during the month of October, around there.

“The Court: That objection is sustained.

* * *

“Mr. White: I object to that, your Honor, on the grounds as stated before; different conditions, different product, different time, different parties involved.

“The Court: The objection is sustained as to this particular proposed charter.

“Mr. Howard: I would like to make a very brief statement. This vessel broke down on the West Coast of the United States or Mexico. Obviously, it would not be possible to charter a vessel during the period it is broken down.

“We submit that we should be entitled to prove by this witness what the vessel earned when it did get back to the East Coast after repairs had been made, because we obviously could not testify as to the earning power of the vessel during the period it was broken down.

“The Court: You could prove by some witness who knows what the charter market was for a vessel of this type during the period of the breakdown.

“The objection is sustained and the Court will disregard the statement of the witness regarding the profits of this charter.

“Mr. Howard: At this time, for the purpose of the record, I offer Identification A-28.

“Mr. White: That is objected to on the grounds previously announced.

“The Court: Sustained. Admission is denied.”

(13) In finding that cross-libelant was not entitled to recover any damages claimed in the cross-libel as amended at the time of trial; and in denying to cross-libelant its damages in the sum of \$36,-329.37 against cross-respondents as shown by the evidence, for the cause of corrective repairs, towing services, additional vessel operating expenses, loss of profits, additional fuel consumed, and agency expenses incurred as a result of the several breakdowns of the vessel due to defective workmanship and materials furnished by libelants.

(14) In entering decree in favor of libelants against claimant for the sum of \$64,366.75 plus costs and disbursements taxed.

Dated this 16th day of May, 1949.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 16, 1949.

[Title of District Court and Cause.]

COST AND SUPERSEDEAS
BOND ON APPEAL

Know All Men By These Presents:

That we, Compania Naviera Limitada, of Panama, a corporation, Claimant and Cross-Libelant in

the above cause, as Principal, and National Surety Corporation, a corporation authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto E. A. Black and J. J. Featherstone, copartners doing business as Commercial Ship Repair, Libelants and Cross-Respondents in said cause, in the sum of Eighty Thousand Dollars (\$80,000.00), to be paid to said libelants in lawful money of the United States, for the full and complete payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Whereas, said above named Libelants in this cause have heretofore filed libel in rem against the above named respondent vessel, for reasons in said libel alleged, and have caused process to be issued and served, and have caused said vessel to be duly attached thereunder; and

Whereas, in the time and manner provided by law, Compania Naviera Limitada, of Panama, a corporation, thereafter appeared as Claimant of said respondent vessel, and procured release of said vessel from attachment by filing in said cause a certain Release and Cost Bond to the United States Marshal, in the sum of \$80,000.00, upon which said bond the National Surety Corporation was surety; and

Whereas, Claimant thereafter filed Answer to said libel, and contested the asserted right of said libelants to recover upon said libel; and Claimant

did also file Cross-Libel herein, seeking recovery of damages herein against Libelants as Cross-Respondents, for reasons in said Cross-Libel alleged, which asserted right of Cross-Libelant to recover was contested by Answer of Cross-Respondents thereafter filed herein; and

Whereas, after trial upon all issues in said cause, both on the libel and the Cross-Libel, a Final Decree was entered in said cause on the 7th day of May, 1949, awarding to said libelants judgment and decree against Compania Naviera Limitada, of Panama, a corporation, the owner and claimant of respondent vessel and the principal upon the cost and release bond filed herein, in the sum of \$64,366.75, together with Libelants' costs and disbursements herein taxed in the sum of \$357.30, amounting in all to the total sum of \$64,724.05, with interest thereon at the rate of six per cent per annum from May 5, 1949, until paid; and

Whereas, upon motion and application of Claimant, Cross-Libelant to the above entitled court, the amount of cost and supersedeas bond on appeal to the United States Court of Appeals for the Ninth Circuit was fixed in the sum of \$80,000.00, effective to stay execution of said judgment and decree;

Now, Therefore, the condition of this obligation is such that if said claimant, Compania Naviera Limitada, of Panama, a corporation, as Principal, shall pay the judgment and decree heretofore entered herein, together with any costs, damages and interest that may be awarded against it on appeal

or dismissal thereof or failure to make its plea good; or if said claimant shall perfect and prosecute an appeal with effect and shall abide by and answer and pay the money awarded by whatever decree may be rendered by any appellate court on appeal in the above entitled cause, or whatever decree may be rendered by the District Court on the mandate of said appellate court, including all damages, costs and interest awarded thereby; then this obligation shall be void, otherwise it shall remain in full force and effect.

Signed and Sealed this 17th day of May, 1949.

COMPANIA NAVIERA

LIMITADA, of Panama,
a corporation,

Claimant and Cross-Libelant.

MERRITT, SUMMERS &
BUCEY,

By MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,

As Its Proctors.

Principal.

NATIONAL SURETY
CORPORATION,

[Seal] By /s/ R. R. GRONIGER,

Its Attorney-in-Fact.

Surety.

The foregoing bond is approved as to form, amount and surety, and is hereby accepted as suf-

ficient cost and supersedeas bond staying execution in the above entitled cause pending determination of appeal and upon such appeal.

Notice of filing said bond is hereby waived.

Dated this 17th day of May, 1949.

TODD, HOKANSON & WHITE,
By /s/ RUSSELL V. HOKANSON,
Proctors for Libelants and
Cross-Respondents.

The foregoing bond is approved both as a bond staying execution prior to appeal and as a cost and supersedeas bond upon appeal.

Dated this 17th day of May, 1949.

/s/ JOHN C. BOWEN,
District Judge.

[Endorsed]: Filed May 17, 1949.

[Title of District Court and Cause.]

STIPULATION AND ORDER RE RELEASE
AND COST BOND

It is hereby stipulated and agreed that the Release and Cost Bond in the sum of \$80,000.00 heretofore filed herein on the 15th day of October, 1948, with claimant Compania Naviera Limitada, of Panama, as Principal, and the National Surety Corporation, as Surety, shall be released and discharged and the surety thereon exonerated upon

the approval by the District Court herein of Cost and Supersedeas Bond on Appeal in the sum of \$80,000.00 and the filing of said bond with the Clerk of said court; and that an order may be entered by the District Court, upon compliance with the aforesaid conditions, providing for the discharge and release of the Cost and Release Bond and the exoneration of the surety thereon.

E. A. BLACK and J. J. FEATHERSTONE, co-partners doing business under the assumed name and style of Commercial Ship Repair,

Libelants and Cross-Respondents,

TODD, HOKANSON & WHITE,

By /s/ RUSSELL V. HOKANSON,

Proctors for Libelants and

Cross-Respondents.

COMPANIA NAVIERA LIMITADA, of Panama,
a corporation,

Claimant and Cross-Libelant,

MERRITT, SUMMERS

& BUCEY,

By /s/ CHARLES B. HOWARD,

Proctors for Claimant and

Cross-Libelant.

ORDER

Upon the basis of the foregoing stipulation, and it further appearing from the records and files herein that a Cost and Supersedeas Bond in the sum of \$80,000.00 with sufficient surety has this date been approved and filed herein, it is hereby

Ordered and Adjudged that the Release and Cost Bond heretofore filed herein on the 15th day of October, 1948, in the sum of \$80,000.00 with Claimant Compania Naviera Limitada, of Panama, a corporation, as Principal, and the National Surety Corporation, as Surety, be and the same is hereby released and discharged and the surety on said Release and Cost Bond is exonerated from any and all liability thereunder.

Done in open court this 17th day of May, 1949.

/s/ JOHN C. BOWEN,

District Judge.

Presented by:

/s/ CHARLES B. HOWARD,

Of Proctors for Claimant-
Cross Libelant.

Approved:

/s/ RUSSELL V. HOKANSON,

Of Proctors for Libelants-
Cross Respondents.

[Endorsed]: Filed May 17, 1949.

[Title of District Court and Cause.]

STIPULATION AS TO RECORD
AND APOSTLES ON APPEAL

In accordance with Subdivision 4, Rule 5, of the Rules in Admiralty, United States Circuit Court

of Appeals for the Ninth Circuit, it is hereby Stipulated and Agreed by and between the parties to the above cause, through their proctors of record, with respect to the contents of the record and Apostles on Appeal to be prepared by the Clerk of the District Court for transmittal to the Circuit Court of Appeals, as follows:

(A) That the Clerk of the District Court shall omit from the record and Apostles on Appeal to be transmitted to the Circuit Court of Appeals the following pleadings:

District Court Pleading No. 2:

Praecipe.

District Court Pleading No. 8:

Claimant's Motion for Reduction of Bond.

District Court Pleading No. 9:

Note for Calendar on Claimant's Motion for Reduction of Bond.

District Court Pleading No. 10:

Exceptions to Libel.

District Court Pleading No. 11:

Note for Calendar on Exceptions to Libel.

District Court Pleading No. 12:

Order Denying Motion for Reduction of Bond.

District Court Pleading No. 14:

Motion to Set Cause for Trial.

District Court Pleading No. 16:

Praecipe for Citation.

District Court Pleading No. 17:

Cross-Libelant's Motion for Stay under Rule 50.

District Court Pleading No. 18:

Note for Calendar on Motion for Stay.

District Court Pleading No. 19:

Affidavit Resisting Motion for Stay.

District Court Pleading No. 20:

Exceptions to Cross Libel.

District Court Pleading No. 21:

Notice of Presentation of Exceptions.

District Court Pleading No. 22:

Counter Affidavit on Cross-Libelant's Motion for Stay.

District Court Pleading No. 23:

Counter Affidavit on Exceptions of Cross-Respondents to Cross-Libel.

District Court Pleading No. 25:

Marshal's Return on Citation.

District Court Pleading No. 26:

Memorandum of Authorities of Cross-Libelant on Motion for Stay.

District Court Pleading No. 27:

Cross-Respondents' Memorandum of Authorities
Exceptions to Cross-Libel.

District Court Pleading No. 28:

Cross-Respondents' Memorandum of Authorities
in Response to Motion for Stay.

District Court Pleading No. 29:

Order on Cross-Respondents' Motion for Stay.

District Court Pleading No. 30:

Order on Cross-Respondents' Exceptions.

District Court Pleading No. 31:

Notice of Taking Deposition De Bene Esse of
Andrew Beis.

District Court Pleading No. 32:

Notice of Taking Deposition De Bene Esse of P. Baxevanis.

District Court Pleading No. 36:

Note for Calendar on Motion for Production.

District Court Pleading No. 38:

Notice of Taking Depositions on Behalf of Cross-Libellant.

District Court Pleading No. 39:

Notice of Taking Deposition of N. A. Cross.

District Court Pleading No. 40:

Notice of Taking Depositions on Behalf of Cross-Libellant.

District Court Pleading No. 44:

Note for Calendar on Motion for Production.

District Court Pleading No. 45:

Notice of Taking Deposition on Behalf of Cross-Libellant.

District Court Pleading No. 47:

Praeipie by Libelants for Subpoena to Williams.

District Court Pleading No. 52 and 52a:

Exhibits and deposition of W. Bruce Bryant.

District Court Pleading No. 53:

Marshal's Return on Subpoena—Northern California.

District Court Pelading No. 54:

Praeipie for Subpoenas to Craig Wallace and S. A. Lund.

District Court Pleading No. 55:

Marshal's Return on Subpoenas to Craig Wallace and S. A. Lund.

District Court Pleading No. 55a:

Trial Brief of Claimant and Cross-Libelant.

District Court Pleading No. 55b:

Libelants' Memorandum of Authorities on Libel.

District Court Pleading No. 55c:

Libelants' Memorandum of Authorities, Supplemental.

District Court Pleading No. 56:

Praecipe for Subpoena to S. A. Lund.

District Court Pleading No. 57:

Libelants' - Cross - Respondents' Supplemental Memorandum of Authorities.

District Court Pleading No. 58:

Marshal's return on subpoena.

District Court Pleading No. 61:

Notice of Presentation of Findings of Fact, Conclusions of Law and Final Decree.

District Court Pleading No. 68:

Note for Calendar on Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond.

(B) That the Clerk of the District Court shall omit from the record and Apostles on Appeal to be transmitted to the Circuit Court of Appeals the following exhibits:

Libelants' Exhibit No. 9:

Time Cards for Personnel in the Shipyard.

Libelants' Exhibit No. 16:

Heat Exchanger (offer of exhibit withdrawn).

Claimant's Exhibit No. 11:

Invoice for Freight Charge on Spare Parts to Manzanillo (offer of exhibit withdrawn).

Claimant's Exhibit No. 18:

Letter from Newell of Union Diesel Engine Company to Merritt, Summers & Bucey (objection to offer sustained).

Claimant's Exhibit No. 19:

Large diagram of main engine aboard "Urania" (not used illustratively or for descriptive purposes during trial).

(C) That, except as hereinabove enumerated, all original pleadings on file herein, together with all testimony and all original exhibits offered in evidence by any of the parties, including exhibits identified and offered but refused admission in evidence, shall be transmitted by the Clerk of the District Court as a part of the record and Apostles on Appeal to the Circuit Court of Appeals.

(D) That claimant and cross-libelant's identification A-29, being a piece of machinery offered but not admitted in evidence, may be boxed or crated and transmitted to the Circuit Court of Appeals, unattached to the record or Apostles on Appeal in this cause.

(E) That in printing said record or Apostles on Appeal it shall not be necessary to print the following items or portions thereof:

(1) The full title of pleadings, orders and other papers, the verifications thereof and the full file marks; it being sufficient that the Apostles on Appeal, as printed, contain a plain designation of such pleadings, orders and other papers, together with a notation of the dates when they were filed.

(2) The opening statements of proctors for any of the parties to this cause and the oral arguments of any of the proctors made at the close of the trial.

(F) That the following original exhibits or documents admitted, or identified but not admitted, in evidence as exhibits, which will be sent up by the Clerk of the District Court to the Circuit Court of Appeals as a part of the record or Apostles on Appeal need not be printed, but said exhibits or identifications may be considered by the appellate court in their original form, subject to the approval of the Circuit Court of Appeals for the Ninth Circuit.

Libelants' Exhibit No. 10:

Records of stores issued from shipyard stock to tanker "Urania."

Libelants' Exhibit No. 11:

Invoices on libelants' outside purchases for tanker "Urania."

Libelants' Exhibit No. 13:

Specifications of Sparkman & Stevens for conversion of tanker.

Claimant's Exhibit No. 4:

Specifications of Sparkman & Stevens for conversion.

Claimant's Exhibit No. 8:

Pilothouse log book, tanker "Urania."

Claimant's Exhibit No. 9:

Invoices and statements for expenditures at Manzanillo, Mexico.

Claimant's Exhibit No. 10:

Statements of Manzanillo agent for tanker "Urania."

Claimant's Exhibit No. 12:

Engine room log book, tanker "Urania."

Claimant's Exhibit No. 13:

Continuation of engine room log book, tanker "Urania."

Claimant's Exhibit No. 16:

Instruction book and manual of Union Diesel Engine Company.

Claimant's Exhibit No. 24:

Invoices and statements on Los Angeles disbursements.

Claimant's Exhibit No. 29:

Lubricating oil cooler (identification only).

(G) That this stipulation and the order of court entered pursuant thereto shall be filed and certified up with the record to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 6th day of June, 1949.

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,

Proctors for Libelants and
Cross-Respondents.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,

Proctors for Claimant and
Cross-Libelant.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

ORDER ON RECORD AND APOSTLES
ON APPEAL

Upon motion of claimant-cross libelant as the appellant in this cause, and in accordance with stipulation signed by all parties to this cause on June 6, 1949, and filed herein; it appearing to the court proper;

It is hereby Ordered that, in connection with the appeal of claimant-cross libelant to the United States Circuit Court of Appeals for the Ninth Circuit in said cause, all original pleadings, all original exhibits and identifications, original depositions, together with exhibits related thereto, and the original of the court reporter's transcript of the testimony and proceedings at the trial, excepting those items or portions thereof provided and set forth in said stipulation of proctors dated June 6, 1949, to be omitted from the record and Apostles on Appeal, shall be withdrawn by the Clerk of this court, and transmitted by the Clerk of this court, in lieu of copies, and as a part of the record and Apostles on Appeal in said cause.

Done in open court this 6th day of June, 1949.

/s/ JOHN C. BOWEN,

Judge.

Presented by:

/s/ CHARLES B. HOWARD,

Of Proctors for Claimant-

Cross Libelant as Appellant.

Approved for entry:

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants-Cross
Respondents as Appellees.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

PRAECIPE

To Millard W. Thomas, Clerk of the United States
District Court for the Western District of Wash-
ington, Northern Division:

Utilizing transcript of testimony now being prepared by the court reporter and to be filed herein, you are hereby requested to prepare in the above entitled cause record or Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as required by Rule 5 of the Admiralty Rules of said appellate court, and containing the items specified in this praecipe and/or in the stipulation as to the record or Apostles on Appeal filed herein.

(A) Caption showing proper style of the court and showing title and number of the cause in which was entered the final decree from which this said appeal is taken.

(B) Introductory statement showing

- (1) Time of commencement of the cause;
- (2) Names of all parties including the parties to both the libel and the cross-libel;

(3) Names and addresses of all proctors;

(4) Dates of filing various pleadings;

(5) Date of arrest or attachment of the respondent vessel;

(6) Date of release of respondent vessel with the amount of the bond and the names of the principal and surety thereon;

(7) The name of the trial judge;

(8) The time of the commencement and conclusion of the trial;

(9) The date of entry of findings of fact, conclusions of law and final decree;

(10) The dates when notice of appeal, assignment of errors and supersedeas bond staying execution prior to and pending appeal were filed and approved, showing the amount of such supersedeas bond and the names of the principal and surety thereon;

(11) Date of order, if any, extending time for filing apostles on appeal.

(C) The original pleadings, together with any exhibits annexed thereto, including the following: (and omitting those pleadings set forth in subparagraph A of Stipulation dated June 6, 1949, filed herein).

District Court Pleading No. 1: Libel.

District Court Pleading No. 3: Stipulation for Costs, \$250 (Libelants').

District Court Pleading No. 4: Affidavit of Publication.

District Court Pleading No. 5: Claim of Ownership.

District Court Pleading No. 6: Release and Cost Bond.

District Court Pleading No. 7: Marshal's Return on Monition and Attachment.

District Court Pleading No. 13: Claimant's Answer.

District Court Pleading No. 15: Cross-Libel.

District Court Pleading No. 24: Interrogatories of Libelants, Cross-Respondents.

District Court Pleading No. 33: Answers of Cross-Libelants to Interrogatories of Libelants, Cross-Respondents.

District Court Pleading No. 34: Answer to Cross-Libel.

District Court Pleading No. 35: Motion of Libelants for Production under Rule 32.

District Court Pleading No. 37: Order on Libelants' Motion for Production under Rule 32.

District Court Pleading No. 41: Deposition of P. Baxevanis.

District Court Pleading No. 42: Notice of Intention to Amend Cross-Libel.

District Court Pleading No. 43: Motion of Claimant-Cross Libelant for Production.

District Court Pleading No. 46: Deposition of S. W. Newell (Claimant's Exhibit "O").

District Court Pleading No. 48: Deposition of N. A. Cross.

District Court Pleading No. 49: Deposition of James D. Clarke.

District Court Pleading No. 50: Deposition of Frank Gallagher.

District Court Pleading No. 51: Order on Motion for Production of Documents under Rule 32.

District Court Pleading No. 52: Depositions of Sundry Witnesses.

District Court Pleading No. 59: Reporter's Record of Court's Decision on 4/18.

District Court Pleading No. 60: Memorandum of Costs and Disbursements.

District Court Pleading No. 62: Findings of Fact and Conclusions of Law.

District Court Pleading No. 63: Final Decree.

District Court Pleading No. 64: Exceptions to Findings, Conclusions and Decree.

District Court Pleading No. 65: Claimant, Cross-Libelant's Request for Findings.

District Court Pleading No. 66: Claimant, Cross-Libelant's Proposed Final Decree.

District Court Pleading No. 67: Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond.

District Court Pleading No. 69: Notice of Appeal.

District Court Pleading No. 70: Assignment of Errors.

District Court Pleading No. 71: Supersedeas and Appeal Bond.

District Court Pleading No. 72: Order Discharging Release Bond.

(D) All depositions, together with all exhibits, in connection therewith (omitting such exhibits or

portions thereof stipulated to be omitted by stipulation filed herein, and transmitting the originals thereof in lieu of copies), including the following:

(1) Deposition of libelants' witness Frank H. Gallagher;

(2) Depositions of Claimant, Cross-Libelant's witnesses Andreas Beis, Panaiotis Baxevanis, James D. Clarke, N. A. Cross, S. W. Newell, George Vernon Roark, Arleigh O. Biehler, Edwin W. Pike, M. L. Newell, William Henry Weiler, Harry J. Summers and George M. Dupuy.

(E) The court reporter's transcript of all testimony and proceedings at the trial of said cause (omitting such items or portions thereof stipulated to be omitted by stipulation filed herein, and transmitting the original thereof in lieu of copies).

(F) All exhibits, or identifications offered and not admitted in evidence, except such exhibits or identifications as may be omitted pursuant to stipulation for omission filed herein, said exhibits to be included in the record or Apostles on Appeal and to contain the following:

(1) Libelants' and Cross-Respondents' exhibits:

#1. Specifications on contract work;

#2. Copy of shipyard invoice for \$30,000 progress payment;

#3. Letter from Commercial Ship Repair to Compania Naviera Limitada dated September 23, 1948;

#4. Specifications for additional work;

#5. Invoice for contract and additional work;

- #6. Invoice for spare parts;
 - #7. Preliminary consolidation of shipyard job orders;
 - #8. Survey report of H. F. Williams;
 - #10. Shipyard records on stores issued from stock;
 - #11. Shipyard invoices on libelants' purchases for tanker "Urania";
 - #12. Libelants' analysis of repair costs and profit;
 - #13. Sparkman & Stevens specifications for conversion;
 - #14. Diagram of Clayton Boiler & Pump by Mr. Biehler;
 - #15. Diagrams of lubricating oil cooler by Mr. Weiler;
 - #17. Survey report of A. B. of Shipping No. 3058 on M/V Urania.
- (2) Claimant's and Cross-Libelant's Exhibits:
- #1. Letter of Libelant signed by E. A. Black containing bid;
 - #2. Receipted invoice of libelant for \$25,000 progress payment;
 - #3. Telegram dated October 13, 1948, from J. J. Featherstone to Antippas;
 - #4. Sparkman & Stevens specifications for conversion;
 - #5. Two invoices for additional work at Winslow and Port Angeles, Washington;
 - #6. Report of survey of Mr. Clarke at Winslow, Washington;

- #7. Report of survey of Mr. Clarke at Port Angeles, Washington;
- #8. Pilothouse log book for M/V "Urania";
- #9. Invoices for disbursements at Manzanillo, Mexico;
- #10. Statement of agent for ship at Manzanillo, Mexico;
- #12. Engine room log book for M/V "Urania";
- #13. Continuation of engine room log book for M/V "Urania";
- #14. Diagrams (five) of main engine;
- #15. Invoice and job order of Clayton Manufacturing Company;
- #16. Instruction book and manual of Union Diesel Engine Company;
- #17. Invoices of Union Diesel Engine Company;
- #20. Analysis by Texas Oil Company of oil samples;
- #21. Survey report of Edwin W. Pike;
- #22. Survey report of George M. Dupuy;
- #23. Survey report of Harry J. Summers;
- #24. Invoices for disbursements at Los Angeles;
- #25. Invoice for towing services;
- #26. General Steamship Corporation, Ltd., cable re charter M/V "Urania";
- #27. Invoice of Shell Oil Company for bunkers at Los Angeles;
- #28. Photostatic copy charter party M/V "Urania";
- #29. Lubricating oil cooler (to be crated and shipped separately);

#30. Copy of Northwest Airlines bill of lading on air freight shipment Knoxville, Tennessee, to Seattle, Washington.

(G) All other motions, stipulations, orders or pleadings, if any, filed subsequent to May 17, 1949, and prior to certification of this record and Apostles on Appeal relating to or in connection with the appeal herein and including this praecipe, the index and clerk's certificate as required by sub-paragraph 5, Admiralty Rules for the Ninth Circuit.

MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant, Cross-Libellant and Appellant, Compania Naviera Limitada, a corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

INTRODUCTORY STATEMENT

(1) Time of Commencement of Cause.

The above entitled cause, in admiralty, was commenced on October 13, 1948, by the filing of a libel in rem against the Motor Tanker "Urania", seeking recovery of a balance of \$64,366.75 alleged to be due to libellants for material, labor and services furnished to the respondent vessel for repair, altera-

tion and renewals. The libel was filed in the Northern Division of the United States District Court for the Western District of Washington. A cross libel for damages was filed on January 26, 1949.

(2) Parties (Appellees and Appellant).

The libelants in said cause are E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair. The libelants are the Appellees upon this appeal.

The claimant of said Motor Tanker "Urania", is Compania Naviera Limitada, a Panamanian corporation and owner of the respondent vessel. The claimant is the Appellant upon this appeal.

The libelants-Appellees are also cross respondents herein and the claimant-Appellant is also cross libelant herein by reason of the aforementioned cross libel.

(3) Proctors' Names and Addresses.

The proctors of record for libelants (Appellees) are Todd, Hokanson & White (Russell V. Hokanson and Richard White), successors to Langlie & Todd (Thomas Todd), who were the initial proctors for libelants. Their address is 682 Dexter Horton Building, Seattle 4, Washington.

The proctors of record for claimant-cross libelant (Appellant) are Merritt, Summers & Bucey (Lane Summers and Charles B. Howard). Their address is 840 Central Building, Seattle 4, Washington.

(4) Dates of Filing of Pleadings.

(a) Libel was filed October 13, 1948;

(b) Claim of Ownership was filed October 16, 1948;

(c) Claimant's Answer to Libel was filed November 16, 1948;

(d) Cross Libel of shipowner was filed January 26, 1949;

(e) Answer to Cross Libel was filed by cross respondents on February 25, 1949;

(f) Notice of Intention to Amend Cross Libel was filed March 18, 1949.

Dates of filing other interim pleadings are as shown on endorsement contained on said pleadings in the Apostles on Appeal.

(5) Date of Arrest of Respondent Vessel.

The respondent Motor Tanker "Urania" was arrested or attached by the United States Marshal at Seattle, Washington, on October 13, 1948, under process of Monition and Attachment issued upon said libel by the Clerk of said court on October 13, 1948.

(6) Date of Release of Vessel and Amount and Surety on Bond.

On October 15, 1948, said respondent Motor Tanker "Urania" was released from her attachment and the custody of the United States Marshal at Seattle upon the filing of a Release and Cost Bond to the U. S. Marshal in the sum of \$80,000 upon which bond claimant (Appellant) was Principal and the National Surety Corporation was Surety.

(7) Trial Judge.

The case was tried before the Honorable John C.

Bowen, United States District Court Judge for the Western District of Washington, Northern Division, at Seattle, Washington.

(8) Time of Trial.

The trial was commenced on April 7, 1949, continuing thereafter from day to day until concluded on April 18, 1949.

(9) Entry of Findings of Fact, Conclusions of Law and Final Decree.

Findings of fact, conclusions of law and final decree were entered by the trial court on May 7, 1949, awarding judgment against claimant (Appellant) as the owner of respondent vessel for the sum of \$64,366.75 plus costs and disbursements taxed in the sum of \$357.30, or a total sum of \$64,724.05, to bear interest at rate of 6% per annum from May 5, 1949, until paid. By said final decree, the cross libel of Appellant was dismissed with prejudice.

(10) Dates on Appeal.

(a) Notice of Appeal and Assignment of Errors were served and filed May 16, 1949.

(b) Cost and Supersedeas Bond on Appeal in the sum of \$80.000, with the same signatories as heretofore shown on the Release and Cost Bond, was approved and filed on May 17, 1949. On the same date an order was entered by the trial court, pursuant to signed stipulation of proctors for all parties herein, releasing and discharging the Release and Cost Bond previously filed, and exonerating the Surety on the Release and Cost Bond from any and all liability thereunder.

(11) Date of Order Extending Time to File Apostles on Appeal with Circuit Court.

Order extending to August 10, 1949, the time for filing Apostles on Appeal was entered June 13, 1949.

Prepared by

MERRITT, SUMMERS &

BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant-Cross

Libelant (Appellant).

Receipt of copy acknowledged.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

STIPULATION AS TO LIBELANTS'
EXHIBITS NO. 9 AND NO. 12

It is hereby Stipulated and Agreed by and between proctors of record for Libelants (Appellees) and Claimant (Appellant) that Libelants' Exhibit No. 9 as offered and admitted in evidence during the trial of this cause consisted of a large number of individual employees' time cards kept by libelants in the ordinary course of their business in operating a shipyard at Winslow, Washington. It is further Stipulated that the time cards which were admitted in evidence as Libelants' Exhibit No. 9 contain a daily or periodic notation of the number of hours of work performed by each individual employee of libelants upon the contract and additional work

aboard the respondent vessel "Urania" while at libelants' shipyard in August, September and October, 1948. It is further Stipulated that the total time for the workmen as recorded on said time cards is set forth by total number of hours and amount under columns entitled "Labor" in libelants Exhibit No. 12, being an analysis by libelants of their costs, overhead and profit on the repair, conversion and purchases made on or for the vessel "Urania" in August, September and October, 1948.

It is further Stipulated that libelants' Exhibit No. 12 reflects the total amount of time for workmen recorded on libelants' Exhibit No. 9 which would be found by the court upon an examination of said time cards, and that in view of the quantity of time cards and the duplication in information contained in libelants' Exhibits No. 9 and No. 12, the appellate court may consider libelants' Exhibit No. 12 without having before it the supporting time cards in libelants' Exhibit No. 9.

Dated at Seattle, Washington, this 6th day of June, 1949.

TODD, HOKANSON & WHITE,

/s/ RUSSELL V. HOKANSON,

Proctors for Libelants and Cross-Respondents (Appellees).

MERRITT, SUMMERS &

BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant and
Cross-Libelant (Appellant).

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME
WITHIN WHICH TO FILE WITH THE
APPELLATE COURT RECORD AND
APOSTLES ON APPEAL.

Comes now the claimant-cross libelant above named, as the Appellant herein, and moves the court for an order extending the time within which the record and Apostles on Appeal in said cause may be filed with the U. S. Court of Appeals for the Ninth Circuit from June 25, 1949, when the time to file would otherwise expire, to and including August 10, 1949. This motion is based upon the records and files herein and upon the affidavit of Charles B. Howard attached hereto and made a part hereof.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant-Cross
Libelant (Appellant).

United States of America,

State of Washington, County of King—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says:

That he is an attorney at law and a partner in the firm of Merritt, Summers & Bucey, proctors of record for the claimant-cross libelant in the above cause.

That Notice of Appeal and Assignment of Errors were served and filed in this cause on May 16, 1949. That concurrently therewith affiant requested Miss Patricia Stewart, the official court reporter, to proceed with the preparation of the transcript of testimony and the proceedings at the trial of said cause and confirmed said request by letter of May 17, 1949, addressed to Miss Stewart, copies of which were also sent to the Clerk of this court and to Todd, Hokanson & White, proctors for the libelants-cross respondents in said cause.

That the trial of said cause extended for nine days in court and the transcript of testimony and proceedings therein will be lengthy and will require additional time beyond forty days to prepare and complete for incorporation into the record and Apostles on Appeal to the appellate court. That this affiant has now been informed by Miss Stewart, the official court reporter, that she presently estimates that said transcript will not be completed before the middle of July, 1949. That in order to allow for any delay that may hereafter be encountered in the preparation of said transcript and to allow for its incorporation in the record and Apostles on Appeal and certification of said Apostles and filing with the appellate court, affiant believes that an extension of time until August 10 for the filing of said record and the Apostles on Appeal is necessary and proper. That said extension to August 10, 1949, for the filing of said record and Apostles on Appeal is within ninety days of the date of service and filing of the

Notice of Appeal and Assignment of Errors in this cause.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 8th day of June, 1949.

[Seal] /s/ LANE SUMMERS,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed June 8, 1949.

[Title of District Court and Cause.]

NOTICE OF HEARING CLAIMANT-CROSS
LIBELANT'S MOTION FOR ORDER EX-
TENDING TIME WITHIN WHICH TO
FILE WITH THE APPELLATE COURT
RECORD AND APOSTLES ON APPEAL.

Comes now the above named claimant-cross libelant (as Appellant herein) by its proctors, Merritt, Summers & Bucey (Charles B. Howard of counsel), and hereby requests the clerk of the above entitled court to note for hearing before the court the above described Motion on the 13th day of June, 1949, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel may be heard.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant (Appellant).

To The Above Named Libelants-Cross Respondents
And To Todd, Hokanson & White (Formerly
Langlie & Todd), Its Proctors:

You, and each of you, are hereby notified that the
above named Claimant-Cross Libelant has requested
the clerk of the above entitled court to note for
hearing on the 13th day of June, 1949, at the hour of
10 o'clock in the forenoon or as soon thereafter as
possible before the above entitled court, Claimant-
Cross Libelant's Motion for Order Extending Time
Within Which to File with the Appellate Court
Record and Apostles on Appeal.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS &
BUCEY,

/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant (Appellant).

Receipt of copy acknowledged.

[Endorsed]: Filed June 8, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
APOSTLES ON APPEAL

This matter having come duly and regularly on for hearing this date after notice and upon motion of claimant and cross libelant (Appellant) for an order extending time for filing Apostles on Appeal, the court having considered said application and the affidavit filed in support thereof, and it appearing to the court proper that said extension be allowed under the circumstances existing, now, therefore,

It is Ordered that the time for claimant-cross libelant, as Appellant, to file in the U. S. Court of Appeals for the Ninth Circuit its record and Apostles on Appeal in said cause, which otherwise would expire on June 25, 1949, be and it is hereby extended to and including August 10, 1949, such extension being necessary and proper to afford sufficient time for the preparation of the transcript of testimony and proceedings at the trial and the certification and filing of said Apostles.

Done in open court this 13th day of June, 1949.

/s/ JOHN C. BOWEN,

U. S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,

Of Proctors for Claimant-

Cross Libelant (Appellant).

Approved as to form:

TODD, HOKANSON & WHITE,
Proctors for Libelants.

Receipt of copy acknowledged.

[Lodged]: June 8, 1949.

[Endorsed]: Filed June 13, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES
ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of the order of court filed and entered June 6, 1949, and praecipe of proctors for appellant, I am transmitting as the apostles on appeal in the above entitled cause the following original pleadings, exhibits offered in evidence, depositions and reporter's transcript of proceedings on file and of record in said cause in my office at Seattle, to-wit:

Introductory Statement (76)

Libel (1)

Libelants' Stipulation for Costs (3)

Affidavit of Publication (4)

Claim of Ownership (5)

Release and Cost Bond (6)

Marshal's Return on Monition and Attachment	
(7)	
Claimant's Answer	(13)
Cross-Libel	(15)
Interrogatories of Libelants, Cross-Respondents	
(24)	
Answers of Cross-Libelants to Interrogatories of	
Libelants, Cross-Respondents	(33)
Answer to Cross-Libel	(34)
Motion of Libelants for Production under Rule	
32	(35)
Order on Libelant's Motion for Production under	
Rule 32	(37)
Deposition of P. Baxevanis	(41)
and Andreas Beis	
Notice of Intention to Amend Cross-Libel	(42)
Motion of Claimant-Cross Libelant for Produc-	
tion	(43)
Deposition of S. W. Newell	(46)
Deposition of N. A. Cross	(48)
Deposition of James D. Clarke	(49)
Deposition of Frank Gallagher	(50)
Order on Motion for Production of Documents	
under Rule 32	(51)
Depositions of Sundry Witnesses (Roark,	
Biehler, Pike, Newell, Weiler, Summers and Du-	
puy)	(52)
Reporter's Transcript of Court's Decision of	
4-18-49	(59)
Memorandum of Costs and Disbursements	(60)
Findings of Fact and Conclusions of Law	(62)

Final Decree (63)

Exceptions to Findings, Conclusions and Decree (64)

Claimant, Cross-Libelant's Request for Findings (65)

Claimant, Cross-Libelant's Proposed Final Decree (66)

Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond (67)

Notice of Appeal (69)

Assignment of Errors (70)

Supersedeas and Appeal Bond (71)

Order Discharging Release Bond (72)

Stipulation as to Record and Apostles on Appeal (73)

Reporter's Transcript of Testimony and Proceedings (81)

Order on Record and Apostles on Appeal (74)

Praecipe for Apostles on Appeal (75)

Stipulation as to Libelants' Exhibits #9 and #12 (77)

Motion for Order Extending Time within which to File with Appellate Court Record and Apostles on Appeal (78)

Notice of Hearing Claimant-Cross Libelant's Motion for Order Extending Time within which to File with the Appellate Court Record and Apostles on Appeal (79)

Order Extending Time for Filing Apostles on Appeal to and including August 10, 1949 (80)

Libelant Exhibits 1 to 8 inclusive; 10 to 15 inclusive; 17.

Respondent Exhibits A-1 to A-10 inclusive; A-12 to A-17, incl; A-20 to A-30 inclusive.

I further certify that the foregoing constitute the apostles on appeal from the Final Decree herein filed and entered on May 7, 1949, to the United States Court of Appeals at San Francisco.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 3d day of August, 1949.

MILLARD P. THOMAS,

Clerk,

[Seal] By /s/ TRUMAN EGGER,

Chief Deputy.

In the District Court of the United States for the
Western District of Washington, Northern
Division

In Admiralty—No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-
partners doing business under the assumed
name and style of Commercial Ship Repair,
Libelants,

vs.

THE MOTOR TANKER "URANIA," her en-
gines, tackle, apparel, furniture and equipment,
Respondent,

COMPANIA NAVIERA LIMITADA, a corpora-
tion,

Claimant.

COMPANIA NAVIERA LIMITADA, a corpora-
tion,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-
partners doing business under the assumed
name and style of Commercial Ship Repair,
Cross-respondents.

Before: The Honorable John C. Bowen,
District Judge.

TRANSCRIPT OF PROCEEDINGS
AT TRIAL [1*]

Seattle, Washington, April 7, 1949

* Page numbering appearing at foot of page of original Reporter's Transcript.

Appearances:

MR. RUSSELL V. HOKANSON,

MR. RICHARD S. WHITE,

for and on behalf of

libelants and cross-respondents.

MR. CHARLES B. HOWARD,

THEODORE LeGROS,

for and on behalf of respondent,

claimant and cross-libelant.

The Court: Are parties and counsel ready to proceed with the trial of Black and Featherstone, co-partners, doing business as Commercial Ship Repair, vs. The Motor Tanker "Urania," etc. and Compania Naviera Limitada, claimant and respondent?

Mr. Hokanson: Libelants are ready, Your Honor.

Mr. Howard: Respondent and claimant is ready with the exception, if the Court please, of one matter that is pending on notice of intention to amend the cross libel, which we are here to move at this time.

The Court: The Court will dispose of that a moment later. Is this matter an admiralty cause of action which comes before the Court for trial by the [2] Court as the trier of the fact? That being the case, you may present the matter which you started to mention, Mr. Howard.

Mr. Howard: May it please the Court, on March 18 we served upon the libelant our notice of inten-

tion to amend the cross libel, which notice was filed in the Clerk's office on the same date. At this time, and pursuant to said notice and general Admiralty Rule 23, we move the Court for an order permitting amendment of the cross libel in the following respects: referring to the third page of the cross libel——

The Court: When was the cross libel signed?

Mr. Howard: January 26th.

The Court: Subparagraph 1 of paragraph 4?

Mr. Howard: That is the item which we would first like to refer to. We move the Court for an order permitting the deletion of that item from the cross libel. We have also given notice of our intention to move the Court for an order to permit an amendment by adding a new subparagraph 1 covering an item of repairs to Clayton boiler and generator at Long Beach in the sum of \$678.86.

The Court: Is there any objection to the motion as to those two details?

Mr. Hokanson: There is no objection, Your Honor. [3]

The Court: What do you think is the most practical way of accomplishing it?

Mr. Howard: If the Court please, I have prepared a new page which I think we can substitute in lieu of that, which eliminates one item and adds the other.

The Court: Does Mr. Hokanson agree that is an appropriate method of accomplishing the amendment desired?

Mr. Hokanson: That is quite agreeable, Your Honor.

The Court: Those are the only two items respecting the amendment asked?

Mr. Howard: There is one other item, Your Honor, that we have agreed upon about two weeks ago.

The Court: Is it covered in this sheet?

Mr. Howard: No, Your Honor, it is not.

The Court: You may mention it.

Mr. Howard: Item 10 on page 3, "Corrective cleaning of tanks at Long Beach, California, \$2157.00." As to that item, I have advised counsel for the libelants and cross respondents that we waive that item and are willing to have that item deleted from our claim.

The Court: Why not just delete it from this page? Will you look, Mr. Howard, at page 4 of the cross libel and see if there is any item on that [4] affected by this amendment?

Mr. Howard: Yes, Your Honor, that will change the amount shown in Paragraph 5. I do not have the corrected total now, but at the next recess I can compute that.

The Court: You can do that by changing the figures. Does anyone connected with the case object to the Clerk taking out the original page 3 of the cross libel which is now in that cross libel, and substituting in the place of it this new page 3?

Mr. Hokanson: No objection, Your Honor.

The Court: The Clerk will do that.

The motion for trial amendment is granted in the respects mentioned. You may proceed.

Are the libelants contented with the form of libelants' pleadings now in effect?

Mr. Hokanson: We rest on our pleadings as they stand.

The Court: Does your answer to the cross libel sufficiently cover these amendments?

Mr. Hokanson: I have not scrutinized it with a view to the amendments, but it constitutes a general denial and with certain affirmative matters set up.

I believe, Your Honor, you having called that to my attention, that one of our affirmative allegations may possibly be affected.

The Court: Do your clients plead a general denial to these cross libel items?

Mr. Hokanson: Yes, Your Honor.

The Court: May it be understood for the sake of the record that the amended items be deemed denied by the answer which is already on file?

Mr. Howard: That is agreeable, Your Honor.

The Court: Is there some affirmative defense matter which you wish likewise to apply to these amended items?

Mr. Howard, in addition to your cross libel, was there a separate answer to the libel?

Mr. Howard: Yes, Your Honor. That was filed on November 16.

The Court: Is that still in effect, or is it superseded by the cross libel?

Mr. Howard: That answer is still in effect.

The Court: Will the Clerk take that answer and the libel and the cross libel and the answer to the cross libel out of the file and let the Court have them?

Mr. Hokanson: Your Honor, the changes will not affect our answer to the cross libel.

The Court: In other words, you think that your answer, both as to general denial and as to the [6] affirmative matter pleaded in the answer, if there is any such affirmative matter, does not need any further statement other than what you have already made?

Mr. Hokanson: That is correct, Your Honor.

(Whereupon, opening statement having been made on behalf of libelant, the following proceedings were had and done, to-wit:)

Mr. Howard: I have that figure to insert in paragraph 5 of the cross libel, Your Honor.

The Court: Would you like to write it in?

Mr. Howard: Yes, Your Honor.

The Court: Does Mr. Hokanson agree he may do so?

Mr. Hokanson: Yes. What is the figure?

Mr. Howard: \$39,543.37.

The Court: Strike out the figure as now written and substitute the correct figure in the place of it. You may call libelants' first witness.

Mr. Hokanson: Mr. Black. [7]

EDWARD A. BLACK

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. Edward A. Black.

Q. Your residence, Mr. Black?

A. 4532 East Laurel Drive, Seattle, Washington.

Q. What is your business or occupation?

A. Co-owner of Commercial Ship Repair.

Q. Who is your co-partner?

A. Mr. J. J. Featherstone, my father-in-law.

Q. And does Commercial Ship Repair have repair facilities in King County? A. They do.

Q. Where is that located?

A. We have one dock at Pier 66 in Seattle, and another one in Winslow, Washington.

Q. That is in Kitsap County?

A. Bainbridge Island, yes.

Q. Would you describe the facilities at Winslow, Washington, owned by Commercial Ship Repair?

A. At Winslow, we have a complete shipyard, including a 4,000-ton dry dock. It is a very well equipped yard and facilities were set up some time ago and operated during the first war and in the second war building steel minesweepers for the U. S. Navy.

Q. What are your qualifications as a ship-repair man, Mr. Black?

(Testimony of Edward A. Black.)

A. I have spent the past seven years in the ship-repair business, starting at Winslow in 1941 as a ship-fitter's helper, and working on up to the end of the war and the end of 1945 as Assistant General Superintendant in charge of all outside production.

Q. And have you been in that business since 1945? A. Yes.

The Court: 1945, was that the year?

The Witness: No, 1941, Your Honor, when I started.

Q. When was the co-partnership doing business as The Commercial Ship Repair started?

A. April 1, 1946.

Q. Have you been in business continuously since? A. Yes, sir.

Q. Have you ever had any business transaction or transactions with the Compania Naviera Limitada, [9] a Panamanian corporation?

A. Yes, we have.

Q. Would you state when you first had a transaction with that company?

A. In the first part of August, I believe around the 4th of August.

Q. In what year? A. 1948.

Q. Would you state the circumstances surrounding that transaction?

A. We received a call from the General Steamship Company saying they had a set of specifications to be picked up at their office. One of our men picked the specifications up, and our Outside Gen-

(Testimony of Edward A. Black.)

eral Superintendent, Mr. Sweetin, and Mr. Finn, who was our Outside Superintendent on the Seattle side, Seattle Operations, went aboard the *Urania*, which was then a Navy tanker. I believe it was in Lake Union, I couldn't swear to that, but I believe it was.

At that time, they met Mr. Antippas for the first time on board the ship. After going over the first specifications, which we had picked up from the steamship company, Mr. Sweetin and Mr. Finn told [10] Mr. Antippas it was impossible to put a bid in on those specifications, and with the agreement and understanding of Mr. Antippas, Mr. Sweetin and Mr. Finn re-wrote a set of specifications, and it was these specifications which we bid on by item, making a total lump-sum bid of \$39,780, which was taken up to General Steam's office and opened up, I believe, by Mr. Antippas.

Q. Did you thereafter have any further communication with Mr. Antippas?

A. I believe the bids were opened at four p.m., and approximately a quarter to five that same day, I received a call from Mr. Antippas saying that he would like to discuss further negotiations with us in regard to repair work on this ship, and I invited him to come down to our office at Pier 66, which he did.

Q. Mr. Black, do you know whether your bid was low on that job?

A. Our bid was not low.

(Testimony of Edward A. Black.)

Q. How do you know that?

A. Because it was a publicly opened bid, and Puget Sound Bridge and Dredge's bid was \$39,000 even, I believe.

The Court: How much was yours, for the record in [11] this connection?

The Witness: \$39,780.

The Court: How much difference?

The Witness: \$870.

Q. \$780? A. Yes.

Q. Were you advised by Mr. Antippas that your bid was not low? A. I was.

Q. Would you now state what discussion you had with Mr. Antippas when he came to your office?

A. Approximately five o'clock, Mr. Antippas came to my office bringing with him the Captain of the *Urania* and Mr. Harry Williams. This was the first occasion that I had the opportunity of meeting any one of the three gentlemen. In my office at that time there was Mr. Joe Sweetin and Mr. Fred Finn. We discussed certain phases of our bid. There were a few items they were wondering if we had included in our original bid, which were minor. There were also three additional items they wanted an agreed price on, which we gave them. One was installing some bits on the fore part of the ship, which we gave them an agreed price of \$300.

Mr. Hokanson: May I interrupt you, so that you [12] may testify from a document which I

(Testimony of Edward A. Black.)

would like marked Libelants' Exhibit 1 for identification?

(Set of specifications marked Libelants' Exhibit 1 for Identification.)

The Court: At some appropriate time in the case, in the course of the direct examination of this witness—and the same would be true in the case of any other of the proprietor witness, proprietors in libelants' business—the Court would be interested to hear testimony at greater length concerning the qualifications of these libelants to do repair work of this magnitude. That would involve not only the personal experience, but also the nature and capacity of the plant repair yard and the suitability of equipment employed and the competence of the submanagers, foremen, superintendents and workmen. I believe in this case there is in question the quality of these repairs for which libelants sue to recover compensation?

Mr. Hokanson: That is correct, Your Honor.

Q. Showing you Libelants' Exhibit 1 for identification, can you identify that? A. Yes.

Q. What is it?

A. It is the original specifications we based our original bid on. These specifications were drawn up by Mr. Sweetin. We attached the additional items discussed in our office that day to the specifications.

The Court: With whom was Mr. Sweetin associated in business?

(Testimony of Edward A. Black.)

The Witness: With the Commercial Ship Repair.

The Court: In what capacity was he connected with that concern?

The Witness: He was our Outside Superintendent.

Mr. Hokanson: I now offer this document in evidence.

Mr. Howard: I would like to examine this witness as to one page of this document before it is ruled upon.

The Court: You may examine him, touching the authentication and admissibility of this document, and confine your questions to that subject.

Voir Dire Examination

By Mr. Howard:

Q. Referring to page 7 of Libelants' Exhibit 1, will you state whether that page was prepared at the time the original bid was made?

A. No, it was not prepared when the original bid was made, because these were the items we discussed in our office after the original bid was opened.

Q. Was page 7 attached to the specifications at the time you discussed this in your office with Mr. Antippas?

A. No, it was not, because our girls had gone home at that time, and we made pencil or ink notations on [14] the back of the specifications and dictated page 7 to the girls the next morning as per our agreement with Mr. Antippas. These speci-

(Testimony of Edward A. Black.)

fications were the original ones sent to Winslow when Mr. Williams and Mr. Sweetin went over before the job was started.

The Court: By "girls" do you mean secretaries or typists in the office?

The Witness: I do, Your Honor.

Q. Are the ink notations that you have referred to contained on some other sheet of this exhibit?

A. Mr. Sweetin during our conversation with Mr. Antippas made some ink notations on the back of page 6 for his reference after they left in order to re-write the items which we included with the original specifications before the job was started.

Q. Then page 7 was not discussed with Mr. Antippas in the form that you have it attached there?

A. It was discussed, but it was not written up.

Mr. Howard: I have no objection to the first six pages of this document marked as Exhibit 1, if the Court please. I do object to page 7.

The Court: Do you have available as a part of that exhibit those notes you say were discussed?

The Witness: Yes, I have, Your Honor.

The Court: Are they on page 7 which is objected to? [15]

The Witness: No, they are just made—just in short items on the back of page 6.

The Court: Is there any reason why page 7 couldn't be deleted, and the Court rule upon the admissibility of the remainder of the Exhibit?

(Testimony of Edward A. Black.)

Mr. Hokanson: I believe page 7 is merely, at least with respect to the first two items, a reiteration of what is contained in ink at the bottom of page 6. The balance of the items should be included, inasmuch as it will be our position——

The Court: When were they done? When was page 1 made?

The Witness: It was made the following morning, that the ship went to Winslow from the Seattle side, and sent over as the original specifications.

The Court: To whom?

The Witness: To Mr. Lindgren, our General Manager of the Winslow plant.

The Court: What if any other use was made of page 7? When was the use made of it?

The Witness: This work on page 7 was accomplished under the original contract, your Honor.

The Court: Did Mr. Antippas or anybody connected with Compania Naviera Limitada or the ship "Urania" have any dealings with page 7, or the facts and data [16] therein contained?

The Witness: Yes, they did, your Honor.

The Court: When and under what circumstances?

The Witness: Mr. Williams had dealings with these items from the very first day of the contract until the items were completed.

The Court: How did he deal with them?

The Witness: He saw these items were carried

(Testimony of Edward A. Black.)

out, the same as the original contract, that they were installed.

The Court: You mean by that to indicate that Mr. Williams used page 7 in connection with his verification of the work, or observation of the doing of the work, while the work was proceeding?

The Witness: Yes, sir.

The Court: Any other items, Mr. Howard?

Q. Were the items on page 7 other than the first two items, numbered 48 and 49 included in the contract work?

A. Item 50 was not included—I mean it was included. Will you state your question again?

Q. Were the items on page 7 other than numbers 48 and 49 included in the contract work?

A. Yes.

The Court: The objection is overruled: Libelants' [17] Exhibit 1 in its present form is now admitted.

(Libelants' Exhibit 1 received in evidence.)

LIBELANTS' EXHIBIT NO. 1

Specifications—M. T. Urania

We propose to accomplish in accordance with specifications and plans, as closely as possible, the following work.

1. Drydocking (*90)

Drydock vessel for cleaning, painting and specified repairs. On completion of work, undock vessel.

*Figure written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

2. Underwater Painting (*580)

Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line, port and stbd, with one coat of AC paint. Paint hull from keel to light load line port and stbd, with one coat of AF paint. Paint hull from light load line to deep load line, port and stbd, with one coat of boottopping paint. Owner to furnish paint.

3. Hull Marking (*150)

Paint in draft marks at bow and stern. Paint name of vessel on bow, port and stbd.

Paint name and hailing port of vessel at stern.

Paint in Plimsoll marks, port and stbd, sides.

4. Name Board (*90)

Manufacture and install suitable name boards on bridge, port and stbd.

5. Sea Valves and Strainers (*125)

Remove strainers from sea chests for examination.

Clean and paint sea chests and strainers and replace strainers in good order. Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

6. Tailshaft (*475)

Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order.

Repack stern gland with new packing.

7. Rudder (*225)

Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.

8. Zinc Plates (*80c)

Quote pound price for replacement of zinc plates found to be missing or deteriorated. Zincs to be secured by stainless steel studs and nuts made up in good order.

9. Propeller (*30)

Clean propeller by wire brushing.

Fair up and dress off minor indents in tips of blades.

Separate work order to be issued to cover any major work found to be necessary.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

10. Cargo Tanks and Piping System (*5900)

Remove and dispose of approximately 3000 bbls. of ballast and sludge presently in eight (8) cargo tanks.

Clean tanks and piping system and certify "gas free" for hot work and internal examination.

Test tank heating coils and report condition found.

Open out all cargo valves, both on deck and in tanks, for examination.

Overhaul valves, grind in, repack and rejoint and make up in good order.

Free up all control reach rods of internal tank valves and repack at deck glands.

Open vapor-vacuum valves for examination. Free up as required and close up in good order.

On completion of tank cleaning and internal examination test tanks hydrostatically to requirements of ABS. On completion of testing remove testing water as directed.

11. Cargo Pumps (*400)

Open cargo pumps and motors and clean up for ABS examination.

On completion of examination close up in good order.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

12. Cargo Tank Ullage Covers (*600)

Free up and lubricate all dogs and hinges on cargo tank ullage covers.

Renew gaskets on cargo tank ullage covers. Prove in good order.

13. Fuel Oil Tanks (*800)

Remove diesel oil from fuel tank located in way of engine room and clean tank.

Certify tank "gas free" for internal examination and hot work.

On completion of internal examination test tank hydrostatically to requirements of ABS.

On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable storage for diesel oil while tank is being cleaned and tested.

14. Forepeak and Aft Peak Tanks (*575)

Drain and clean out forepeak and aft peak tanks for internal examination.

It is assumed that these tanks are ballast tanks and are not contaminated.

On completion of internal cleaning and examination tanks to be coated with one coat cement wash.

On completion of above work tanks to be hydrostatically tested to requirements of ABS.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

On completion of testing remove testing water and leave tanks dry.

15. Fresh Water Tanks (*575)

Drain and clean out fresh water tanks located port and stbd in way of engine space. Open tanks for internal examination.

On completion of examination tanks to be coated with one coat cement wash.

Tanks to be hydrostatically tested to requirements of ABS.

On completion of test leave tanks full of fresh water.

16. Ballast Tank Conversion (*1650)

Forward Deep Tank presently fitted as a ballast tank to be converted to use as diesel fuel tank as follows:

Open tank and clean for internal examination.

Connections between tank and forward bilge and ballast pump are to be removed and suitable blanked off.

Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications.

Pump to be suitable located in storeroom over tank space.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Furnish and install fuel oil piping in general accordance with contract plan 837-7.

On completion of work close up tank in good order and test tank and new piping to requirements of ABS.

On completion of test remove all test water from tank and leave ready to receive fuel oil.

17. Gun Tubs and Ammo Lockers (*600)

Remove all ammunition lockers and ready service boxes from decks.

Remove splintel apron and gun pad from poop deck, plug anchor bolt holes watertight.

Remove superfluous sections of forward gun tub leaving section in way of catwalk.

Install suitable handrails and curtain plates in way of catwalk forward where sections of gun tub removed.

Chip off all rough edges and grind smooth.

18. Ladders and Handrails (*425)

Fair and refit all deck ladders and handrails where damaged and install new handrails where missing.

Refit and rig bulwark stanchions at port and stbd

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owner.

19. Port Lifeboat (*50)

Fair out indents in hull of Port lifeboat and restore to original good order.

20. Watertight Doors and Scuttles (*300)

Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and after house. Thoroughly lubricate and prove in good order.

21. Mushroom Ventilators (*125)

Free up, lubricate and prove in good order all mushroom ventilators on weather decks.

22. Ventilation Systems (*75)

Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.

23. Electrical System (*275)

Megger test all electrical circuits, motors and generators throughout vessel to requirements of ABS and report conditions found.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Reassemble and properly close up all open junction boxes, switch boxes and outlets.

Renew fuses on all switchboards where standard fuses fitted.

Report all deficiencies found in electrical system.

Check markings on all electrical switch boxes and relabel correctly as found necessary.

Separate order will be issued for all equipment renewals found to be necessary to restore system to good order and operating conditions.

24. Fire Fighting Equipment (*125)

Check, test and/or weigh all fire extinguishers and CO² bottles and report condition found.

Ships crew will recharge all liquid extinguishers.

Separate order will be issued for recharging CO² bottles as necessary.

25. Engine Controls and Telegraph (*75)

Test out Pilot House controls to main engine and engine order telegraph and report condition found.

Free up and lubricate mechanical equipment found in good order.

26. Steering Engine and Controls (*75)

Test out steering engine and steering gear and report condition found.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Free up and libricate mechanical equipment found in good order.

Remove locking device from rudder before testing.

27. Gauges and Indicators (*125)

Check out all gauges and indicators throughout vessel and report condition found.

Gauges and indicators where dismantled to be reinstalled and connected in good order.

28. Flag Pole (*50)

Damaged flagpole at poop to be faired and refitted as originally installed.

Check and repair electric connections and fittings to restore to good order.

29. Whistles (*50)

Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.

30. Mooring Winch (*2750)

Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 HP.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Controls to be located in convenient location as directed and to be weatherproof.

31. Wheelhouse Doors (*450)

furnish and install two (2) new metal doors at wheelhouse, port and stbd. sides.

Frame to be fitted to accomodate new doors.

Doors to be fitted with all new hardware including holdback and ajar hooks.

32. Navigation and Flood Lights (*150)

Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.

33. Mast Rigging (*75)

Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.

34. Screendoors (*175)

Renew damaged or missing screening in screen doors throughout vessel. Renewals to be bronze or copper screening.

35. Sprinkling System (*175)

Sprinkling system to forward ammunition locker to be removed in its entirety.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

36. Ammo Storeroom Bulkhead (*275)

Remove designated section of bulkhead at forward ammunition storeroom.

37. Plumbing and Heating Systems (*475)

Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order.

Vessel to supply any missing or damaged fixtures.

Connect all piping, close all drains, test out and free up flushometers.

38. Crews Quarters * Port Side, Main Deck (*3600)

Furnish and install crews quarters to accomodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.

39. Crew Quarters * Stbd Side, Main Deck (*1600)

Furnish and install crews quarters to accomodate two (2) men in one (1) room on stbd side, main deck aft together with sanitary facilities adjacent thereto as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

40. Messroom (*275)

Furnish and install joiner bulkheads in way of officers messroom to suitable divide space and segregate from adjacent crew messroom as directed.

41. Officers Quarters * Boat Deck (*9470)

Furnish and install new section of deck house at port and stbd sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications.

Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accomodate Refrigerator space arrangement.

42. Captains Stateroom (*675)

Captains Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.

43. Refrigeration Space and Equipment (*3250)

Furnish and install Refrigeration Boxes and

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled to restore to good order and reinstalled with all fittings and controls in ship's Galley as directed.

Space as detailed in Arrangement Plan to be enlarged by extending stbd bulkhead approximately three (3) feet to stbd side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed.

Center section will not be insulated but will be used for access to Meat Box on Port Side and to Vegetable Room on stbd side.

Controls for individual boxes to be located in center section adjacent to boxes served and compressor to be located conveniently in Engine Space.

44. Galley (*370)

Remove domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator space.

Clean up service tables by wire-brushing to bare metal.

Check out Galley electric range and report condition found.

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Repair cowling over galley range to restore to original good order.

Overhaul galley range exhaust blower as necessary to restore to original good order.

45. Clayton Boilers—(2) (*850)

Clean out two (2) Clayton Boilers located in Engine Space.

Thoroughly check out, examine and test all parts and controls and report condition found.

46. Anchor Windlass (*325)

Check out anchor windlass, drive motor and controls and report condition found. Assemble parts in good order and test windlass to ABS requirements. Thoroughly lubricate.

47. Steam and Water Lines (*225)

Connect up and test out all existing fresh water, steam, sanitary and fire lines throughout vessel and report condition found.

Renewals found to be necessary to be covered by separate work order.

48. Bitts—install 2—10" (*300)

*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

49. Free up skylight (*75)

48. Panama Bitts (*300)

Furnish and install two (2) ten-inch (10")
Panama Bitts.

Bitts to be located on focsle head, port and stbd,
as directed.

49. Skylight Operating Gear (*75.00)

Free up and lubricate operating gear of engine
room skylight and prove in good order.

50. Chart Room (*1500)

Furnish and install Chart Room to be located aft
of Captain's Quarters on Boat Deck approximately
8 ft x 8 ft x 7 ft. (Revised item to be issued giving
details.)

[Items 48 and 49 are written in ink at the
foot of page 6 of original exhibit.]

51. Engineers Assistance (*3.25 per hr.)

Furnish services of two (2) qualified Diesel en-
gine machinists to walk in Engine Room as directed
by Chief Engineer.

52. Chain Pipe Covers (*00)

Furnish and install chain pipe covers as required.
Free up and refit existing dogs and covers on chain
pipes and hawse pipes, port and stbd.

*Figures written in pencil appearing in left mar-
gin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

53. Pipe Lagging (*00)

Check out entire vessel for defective pipe lagging and report condition found. All defective lagging to be renewed or repaired to restore to good order.

54. Dry Storeroom Shelving (*00)

Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.

55. Vegetable Locker (*00)

Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal screen.

56. Door Locks (*00)

Renew or repair defective joiner door locks throughout vessel.

Furnish keys with new locks.

57. Pelorus Stands (*00)

Remove two (2) Pelows stands located at port and stbd sides of bridge. Flush off cuts and grind smooth.

*Figures written in pencil appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

[Note]: The following is written in ink on the back of page 6 of original exhibit.

1. Port holes
 2. Deck covering
 3. Insulation
 4. Scuttles
 5. Skylights
 6. Chain pipe covers ✓
 7. Pipe Lagging ✓
 8. Fire Extinguishers
 9. —none
 10. Store room shelves ✓
 11. Locks ✓
 12. Portable ventilating fans
 13. Searchlights
 14. Remove Pelorus stands ✓
 15. Install bitts forward
 16. Pilot house extension
- Chart extension \$1500.00

SU 5119

Admitted April 7, 1949.

Direct Examination
(Continued)

By Mr. Hokanson:

Q. With respect to the writing on the reverse side of page 6, calling your attention to item 16,

(Testimony of Edward A. Black.)

would you state your recollection as to the reason for the inclusion of that notation?

A. Item 16 is "Pilot house extension and chart room—\$1500." Mr. Antippas wanted a chart house built on the *Urania* at the time he was in our office. He asked what the cost would be to build a steel chart house, describing the type of house he wanted, the approximate number of port lights and the approximate size. I figured up the approximate amount of steel, and the labor, and gave him a price of \$1500, which was agreeable to Mr. Antippas. He said that he would leave that item up to the discretion of Mr. Harry Williams, who would be his representative on the job, and as the ship got to Winslow, it would be up to Mr. Williams to tell them whether to proceed with the chart house or not to proceed with the chart house. [18]

Q. Did you arrive at a price for the items listed on Exhibit 1? A. Yes.

Q. What agreed price did you reach with Mr. Antippas?

A. Our original bid covered from items 1 through 47. Item 48 was installing of two ten-inch bitts, agreed price \$300. Item 49 was working over the operating gear of the skylight, agreed price \$75. Item 50 was chart room installing to be located on boat deck, approximate size eight feet by seven feet, agreed price \$1500.

Q. Did you at this meeting with Mr. Antippas arrive at any fixed figure for all of the items through item 49? A. We did.

(Testimony of Edward A. Black.)

Q. What was that amount?

A. It was \$40,155.

Q. With respect to item 50, what was the understanding?

A. The agreed price would be \$1500 if the item was done, and it would be left up to the discretion of Harry Williams after the ship arrived at Winslow whether or not they would put that additional chart house on the Urania.

Q. As I understand it, the total including the chart room was \$41,655? A. That is correct.

Q. There are certain amounts listed after item 50 with marginal notations, ciphers. Could you explain what those items represent?

A. There are items 51, 52, 53, 54, 55, 56 and 57, seven additional items which were brought up at that time of minor nature, which Mr. Antippas asked me if we had included in our original bid inasmuch as they were not of major consequences. On item 51 he informed me that his engine room crew and his chief engineer would be working over the machinery in the engine room, and what price would we quote them per hour to supply them machinists to work under his chief engineer's supervision. We put "to assist chief engineer, 2 qualified machinists for \$3.25 per hour. In other words, he wanted a basic rate of what we would charge him for men that he procured from our yard to work under the supervision of his chief engineer. The other items were like chain covers and small items which we agreed to do.

(Testimony of Edward A. Black.)

The Court: Where is the statement of that agreed work as to items, including item 50 which you a few minutes ago testified concerning? Is there a written statement showing those items?

The Witness: Yes, there is.

The Court: It has not been offered yet.

Mr. Hokanson: It will be offered through another witness. [20]

The Court: State whether or not these amounts you have just recently mentioned in your testimony comprise all of the amounts you are suing for.

The Witness: No, they are not, your Honor. As the job developed, there was an additional amount of work which was done on an agreed price with Mr. Williams in order to complete the entire job. As many of these original items are written to test and report the findings, and additional orders will be written.

Q. Was anything further discussed at this meeting in your office with Mr. Antippas? A. Yes.

Q. Would you state what that was?

A. Mr. Antippas was accompanied by Mr. Harry Williams and the Captain of the ship. Mr. Antippas informed me that he was leaving for New York either that evening or the next day, and that he was leaving Mr. Harry Williams in complete charge of the repair work as his representative, and Mr. Williams would make all decisions in regard to the work, would be in a position to give us additional work, and be in a position to agree on any deletions

(Testimony of Edward A. Black.)

or any additions other than was stated in the contract, and would be in a position to negotiate in any way as his [21] representative. We were informed that we were not to deal with the ship's crew, the Captain would have charge of the ship's crew and we were to deal directly with Mr. Williams. Anything the crew wanted, they were to deal with Mr. Williams and Mr. Williams would deal directly with us.

Q. Were those instructions carried out?

A. They were carried out, passed on to our Winslow yard. I sent Mr. Sweetin over with Mr. Williams the following morning to introduce Mr. Williams to Mr. Lindgren, Mr. Featherstone and our superintendents, and I gave Mr. Sweetin the instructions to pass on to our Winslow yard, what Mr. Antippas had told us that night in our office, which he did, and those were carried out during the entire job.

Q. Was there any discussion with Mr. Antippas at all on that occasion concerning payment for this work?

A. Yes, there was discussion at that time.

Q. Would you state what that was.

A. I explained to Mr. Antippas this was quite a sum for a small company like ours. He informed me that he would be coming to Seattle at different intervals during the job, and at the recommendation of Mr. Williams and his inspection, that he would advance progress payments and would pay the final

(Testimony of Edward A. Black.)

bill on [22] completion of the work and its acceptance.

Q. Did Mr. Antippas thereafter visit the yard to your knowledge?

A. Mr. Antippas visited our yard on the 4th day of September, 1948. He went to the Winslow yard, and I came over later with Mr. Harry Friedman, who was a machinery dealer here in Seattle, and as I was getting off the ferry at Bainbridge, I met Mr. Antippas getting on the ferry, coming back to Seattle.

The Court: What date was that?

The Witness: September 4th, I believe.

The Court: What year?

The Witness: 1948.

Mr. Howard: I object to the last part of the answer of this witness. It is not responsive to the question.

Q. I will ask you, Mr. Black, did you have any conversation with Mr. Antippas on the occasion of his visit that you have already testified to?

The Court: Does that cure the objection?

Mr. Howard: Yes it does, your Honor.

The Court: You may proceed.

A. I introduced Mr. Antippas to Mr. Friedman. At that time, Mr. Antippas patted me on the back and told me we were doing a wonderful job, that he had gone over [23] the job and he had told Mr. Featherstone in Mr. Williams' presence that as soon as he arrived in New York he would send us a prog-

(Testimony of Edward A. Black.)

ress payment of \$30,000, which I thanked him for and explained to him we could certainly use it, as the job was running to be quite a sum, and at that the time the ferry left and Mr. Antippas got on the ferry, and Mr. Friedman and I went on in the yard.

Q. Mr. Black, if you know, did you ever send Mr. Antippas an invoice covering that payment that he mentioned to you on the occasion of your meeting?

A. Yes. Either that same day or the following day, our accountants made up a statement as per instructions of Mr. Williams for \$30,000, approved by Mr. Harry Williams, and mailed to New York for progress payment.

Mr. Hokanson: Counsel, do you have that invoice in your possession?

Mr. Howard: We have searched the records, and have been unable to find any such invoice as having been received by the company in New York.

Mr. Hokanson: Counsel, will you stipulate that I requested you orally a few days before the trial to produce the document here in question.

Mr. Howard: Yes, I will so stipulate, and I told you at that time that we would make a search for it, [24] which we have done. I am reporting now we have been unable to find that any such invoice was ever received.

Mr. Hokanson: In view of the testimony and Mr. Howard's statement, I propose to introduce secondary evidence.

(Testimony of Edward A. Black.)

The Court: Are you ready to have it marked for identification at this time?

Mr. Hokanson: Yes, your Honor.

(9-8-48 invoice marked Libelants' Exhibit 2 for Identification.)

Q. Showing you what has been marked for Identification as Libelants' Exhibit 2, I will ask you if you can identify that? A. Yes, I can.

Q. What is it?

A. It is the progress payment asked for for \$30,000 from the Urania and owners, which is dated September 8th, the day it was mailed.

Mr. Hokanson: If your Honor please, I will offer this later through another witness.

Q. If you know, did Mr. Antippas send you the \$30,000 payment that he mentioned to you on the occasion of your meeting? [25]

A. No, he did not.

Q. Was any money sent at all in connection with that progress payment?

Mr. Howard: If the Court please, I would like to enter an objection to this line of questioning at this time on the ground and for the reason that the pleadings in this case and the testimony in evidence so far do not show that there was any obligation on the part of the ship owner, the claimant in this case, to make any such payment, and therefore testimony as to whether or not such a payment was made would be irrelevant.

The Court: The objection is overruled.

(Testimony of Edward A. Black.)

A. He did make a progress payment, approximately four weeks later, but instead of \$30,000, he sent \$25,000 to the General Steamship Company, which he informed them to release to us.

Q. Did you receive the \$25,000 from General Steam?

A. Yes. At the instructions of Mr. Williams, we changed our billing from \$30,000 to \$25,000 and sent it in care of General Steamship Company in Seattle, and they in turn issued us a check for a progress payment of \$25,000, approximately somewhere around the 1st of October.

Q. During the month of September, 1948, was your Winslow [26] yard engaged in performing work on any other vessel of the claimant corporation?

Mr. Howard: That is objected to as immaterial and irrelevant.

The Court: What is the purpose of it?

Mr. Hokanson: May it please your Honor, this is merely preliminary. I propose to establish the facts surrounding the work on the Pinta, the communication between Commercial Ship Repair and the claimant corporation with reference to the policy concerning payment of repair work done on ships of foreign flags. It is in issue here. Moreover, the document which we propose to introduce after the preliminary foundation is laid, specifically mentions the Urania, and for that reason I feel that it is very relevant and material to the issue here as

(Testimony of Edward A. Black.)

to whether proper notice was given the claimant corporation with respect to payment.

The Court: I will hear you further after the noon hour, and I will hear Mr. Howard further if he wishes to make a statement at that time. Those connected with this case are excused until 1:30.

(At 12:01 o'clock p.m. Thursday, April 7, proceedings recessed until 1:30 o'clock p.m. Thursday, April 7, 1949.) [27]

April 7, 1949, 1:30 o'Clock, P.M.

The Court: Is there something else you wish to state in answer to the Court's question of what is the materiality or purpose of it? If there is something not already said, the Court will give you that opportunity now. There is no need of repeating what you have already said. The only thing that occurs to me that might be said appropriately is whether you will seek to show that the mentioning of the *Urania* had any connection with this repair job for which the libelants here sue.

Mr. Hokanson: Supplementing what I have already said concerning the objection, a letter which we propose to introduce makes reference to the testimony which has already been given with respect to the progress payment which had been issued as the witness has testified by Mr. Antippas on a date certain. The letter goes further to state generally what arrangements the libelant here would expect concerning payment on the ships in repair at the Winslow yard owned by the claimant corporation.

(Testimony of Edward A. Black.)

The Court: Do you mean the respondent corporation?

Mr. Hokanson: Yes, your Honor. An issue is apparently to be raised here concerning the timeliness of the libel, and I submit to your Honor this document is very material, very relevant to that issue.

The Court: Mr. Howard?

Mr. Howard: If the Court please, I would like to renew my objection to any interrogation of this witness dealing with the account for the repair of the Pinta. I don't believe Counsel's representations to the Court show any grounds requiring that the Court receive or consider evidence as to the repairs, discussions as to the repairs on another vessel claimed to have been owned by the claimant corporation. The libelant pleads an account only on the Urania, and a balance due on that account.

Counsel has referred to some communication which he proposes to offer in evidence, which as I understand deals both with the Pinta and the Urania. If such a document is offered, I don't see that it is necessary, in the first place, for this witness to go into details of the transactions on the Pinta before such document is offered. Furthermore, if the document is offered, the Court must first pass on the admissability of that document. I do not see it is necessary to interrogate this witness as to the Pinta account in order to lay any foundation for offering such a document if it refers also to the Urania account.

(Testimony of Edward A. Black.)

The Court: I think what you should do is to bring forward the document that you think this question objected to may offer preliminary proof, so that it may be more certain that the questions you ask the witness concern the Exhibit to be identified and later offered.

Mr. Hokanson: Mr. Howard, I now ask that you produce the original letter dated September 23rd, addressed to Mr. Antippas, Compania Naviera Limitada.

Mr. Howard: I will produce such letter, subject to reserving my objections.

Mr. Hokanson: If I may be permitted to add this, your Honor: The sole purpose of offering this document is with respect to the matter of putting the respondent corporation on notice as to the requirements of payment by Commercial Ship Repair, and is not intended to prejudice the respondent corporation in any way relating to collateral matter such as the repairs on another vessel. [30]

(9-23-48 Letter marked Libelants' Exhibit 3 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 3, I will ask you if you can identify that document. A. I can.

Q. What is it?

A. It is a letter written by me to Mr. P. Antippas in regard to our way that we expect foreign ships working under Panamanian flags to pay their bills.

(Testimony of Edward A. Black.)

Q. Turning to page 2 of the document, do you recognize the signature thereon? A. I do.

Q. Whose signature is it? A. It is mine.

Q. Was that letter mailed, to your knowledge?

A. It was.

Q. On what date?

A. It was mailed on September 23, 1948.

Mr. Hokanson: I offer the document in evidence, your Honor.

Mr. Howard: If the Court please, I object to the admission of this document at this time. This witness is one of the libelants in this case. He is testifying as to what the contract was between [31] the libelant and the claimant corporation owning the respondent vessel. There has been no testimony offered in the record so far of any provision in the contract calling for any particular method of payment until the witness testified independently of this exhibit of any such arrangements, or any distinction between foreign flag vessels and United States flag vessels. I do not see that this document is admissible or has any relevancy to the issues raised by the libelant on the account for the balance of sixty-four thousand and some odd dollars.

The Court: The objection is overruled. This exhibit is now admitted for the limited purpose as stated by counsel who offered it.

(Libelants' Exhibit 3 received in evidence.)

(Testimony of Edward A. Black.)

LIBELANTS' EXHIBIT NO. 3

[Letterhead]

Commercial Ship Repair

September 23, 1948.

Mr. P. Antippas

Compania Naviera Limitada

Panama

c/o Simpson, Spence & Young

52 Broadway

New York City, N. Y.

Dear Mr. Antippas:

We just received your wire and felt very bad in regards to your considering this an unfriendly act. I am sure that you realize that this is customary that all foreign ships leaving repair yards on the Pacific Coast either arrange for payment or make payment in full before leaving the contractor's yard.

We do not want you to feel that we did not trust your company or have any idea of your not paying your bills. This is merely customary, and in checking with General Steamship Co. this morning, who represents you in Seattle, we merely asked them if your company had said anything to them in regards to repair work on the Pinta. They informed us that you had not, however, they said they would contact your office and notify us whether they would receive money from you or you would pay us direct.

We also checked with your representative, Mr. Williams, who also informed us that he had not

(Testimony of Edward A. Black.)

been advised as to how you intended to pay repairs on the Pinta.

If you will check with Mr. Demitri, who was in Seattle approximately ten days ago, he informed us as soon as he returned to New York he would send us a \$30,000 progress payment on the Urania. To date we have not received this payment.

We certainly want you to realize that we appreciate your business and the cooperation we have received from your company and your representatives and would not do anything to give you the impression that we mistrusted your company or was in any way unfriendly towards you, in checking with General Steam in regards to money.

If you would write us an outline of whatever way you wish to make payments of your ships while in this port, we would be only too glad to cooperate with you and assure you want your friendship, your business, and will do everything within our power to give you good work and value received.

If there is anything further we can do or say in regards to your feelings, please notify us and we will be only too glad to do so.

We would like to take this opportunity in thanking you for your past cooperation and to assure you that we stand ready to help you at any time.

Very truly yours,

COMMERCIAL SHIP REPAIR,
/s/ E. A. BLACK,
Co-Owner.

EAB:em

Admitted April 7, 1949.

(Testimony of Edward A. Black.)

Q. Did you ever have any telephone conversations with Mr. Antippas subsequent to the date of the letter which you have just identified?

A. I did.

Q. Do you remember when?

A. I talked to Mr. Antippas. He called me from New York. I believe it was the 5th day of October, the 4th or 5th of October, and wanted to know whether or not we would allow the Pinta to go on its trial run, because he had sent us \$25,000 instead of his [32] promised \$30,000.

Q. Did you mean the Pinta in your testimony?

A. No, I meant the Urania. The Pinta was never taken on sea trial. At that time, in talking to Mr. Antippas, I assured him we would not hold the trial run up on the Urania. However, we expected him before the ship left our yard after the sea run and it was accepted, that he make arrangements or pay us in full for the repair bill when it was accepted, which he assured me that he would do.

Q. Did you ever have any discussions with Mr. Harry F. Williams in the month of October concerning the payment for the repairs and alterations to the Urania?

A. I did.

Q. Do you remember when?

A. Yes.

Q. What date?

A. I talked to Mr. Harry Williams on the 8th day of October, 1948 in my office at Pier 66 in Seattle.

Q. Would you explain what that discussion was?

(Testimony of Edward A. Black.)

A. Mr. Williams had just arrived from Winslow after agreeing with Mr. Lindgren——

The Court: I do not believe that is responsive. He asked you what the conversation was. [33]

The Witness: Pardon me, your Honor. I was trying to bring out——

Q. Just answer the question.

A. Would you state your question again?

The Court: Read the question.

(Last question read by the reporter.)

A. Mr. Williams was in my office with signed bills and informed me that he was leaving for New York and was to meet Mr. Antippas on Monday morning, October 11. I told Mr. Williams at that time that we would not allow the *Urania* to leave our yard unless we received payment for repair work done aboard this ship before time of departure. Mr. Williams assured me that he would see Mr. Antippas Monday morning as per Mr. Antippas' request, and we would be hearing from them either Monday or Tuesday, or at least before the ship would leave our yard.

I might also say that present in that discussion was Mr. Featherstone and some other people were there that night. I believe Mr. Finn was at the office that night.

Q. Did you receive any communication from the claimant corporation at any time prior to October 14 concerning payment of that account? [34]

A. I did not.

(Testimony of Edward A. Black.)

Q. Did you make any effort to communicate with the claimant corporation prior to October 14 concerning this account? A. Yes.

Q. What was that?

A. I talked to my partner, Mr. Featherstone, and he called Mr. Williams on Monday night, October 11, to see why we had not heard from Mr. Antippas. He also called him again on Tuesday night to see why we had not heard from Mr. Antippas in regard to our bill. Mr. Williams informed Mr.——

Q. Testify only to what you know of your own knowledge. Did you receive any communication——

A. No.

Q. ——from the Compania Naviera Limitada prior to October 14?

A. I did not. I might also state——

Q. Just respond to my questions, please. When were you informed as to the sailing date of the Urania?

A. I was informed approximately three o'clock on Wednesday, October 13, 1948.

Q. By whom? A. By Mr. Featherstone.

Q. Did you ever talk to the master of the vessel on [35] that date? A. No.

Q. What did you then do?

A. I then called General Steam, talked to Mr. Stan Lund, telling him I had been informed from Mr. Featherstone at Winslow that the Captain had said he was leaving the following morning. I asked

(Testimony of Edward A. Black.)

Mr. Lund if he had received any information from Mr. Antippas in regard to our bill.

Mr. Howard: I am going to object to what he asked Mr. Lund. I think that is strictly hearsay, as to any conversation he had with Mr. Lund concerning this, if the Court please.

Mr. Hokanson: It has not been established at this time as to the agency of the General Steamship Corporation, but it can be established and will be established that the General Steamship Corporation was the agent for the claimant corporation here in Seattle at this time, and on that basis, I submit that statements made to or by Mr. Lund as their representative would be admissible outside the hearsay rule on the grounds that the admission against interest on the part of the party to this action.

The Court: Is it or is it not in evidence that the part payment of \$25,000 was made on behalf of the respondent corporation by the General Steamship Corporation?

Mr. Hokanson: That is correct, your Honor.

Mr. Howard: I don't believe that that has been established by the testimony yet.

The Court: Has it been testified to? It might not have been sufficiently established from the standpoint of the respondent corporation, admitting that it was done, but is there testimony to that effect?

Mr. Howard: In a preliminary way.

Mr. Hokanson: Mr. Black has testified they received \$25,000 from the General Steamship Corporation.

(Testimony of Edward A. Black.)

The Court: The objection is overruled.

A. Mr. Lund informed me that he had not received any payment or any information in regard to how Mr. Antippas was going to pay this bill, and he wanted to inform me that the General Steamship Company would not in any way be responsible for the bill, and it was up to us to protect our own selves in regard to the repair work we did aboard the *Urania*.

Q. Did you then on that date cause a libel to be issued out of this Court against the vessel *Urania*?

Mr. Howard: Objected to as a leading question.

The Court: Sustained. Ask what he did, what else did he do on that date?

Q. What else did you do on that date?

A. I then tried to place a call to New York to Mr. Antippas. However, by that time it was approximately 3:30 in Seattle, making it 6:30 in New York, and I could get no one on the phone. I then placed a call to Mr. Hokanson and——

The Court: Who is he?

The Witness: Mr. Hokanson is our lawyer, and I asked him to get libel procedures out for the *Urania*, as we were informed that——

The Court: I do not think you should say what you were informed, what you said to Mr. Hokanson you were informed. You can say what you did in respect to Mr. Hokanson.

The Witness: Telling him that we would like it libelled that night, on the 13th.

(Testimony of Edward A. Black.)

The Court: With what result? What was done after that?

The Witness: Mr. Hokanson then had very little time to act.

Mr. Howard: I object to that, if the Court please.

The Witness: Papers were then properly drawn, and the ship was libelled approximately 8:00 p.m. on [38] the 13th at Winslow.

The Court: On what date?

The Witness: October 13, Your Honor.

The Court: Is that the date that the libel was filed in this case?

Mr. Howard: Yes, it is, Your Honor.

Q. Who was the manager of the Winslow yard at that time from *from* August 6 to October 13, 1948? A. Mr. Arthur Lindgren.

Q. Employed by you? A. He was.

Q. What were his duties at that time?

A. His duties were in charge of the entire Winslow operation with authority to act in our behalf in any way that he saw fit.

Q. Did that authority extend to negotiating prices on contracts for repair work?

A. It did.

Mr. Howard: That is a leading question again.

The Court: Sustained.

Q. What further duties, if any, did Mr. Lindgren have during that period?

A. Mr. Lindgren had duties of writing up additional work and dealing directly with Mr. Williams in regard to work being carried on aboard the

(Testimony of Edward A. Black.)

Urania, [39] and duties in any kind of negotiations either to cost of jobs or final negotiations as to price.

Q. Does the Commercial Ship Repair have contracts with any Government agencies for the repair, alteration or renewal of Government ships?

Mr. Howard: That is objected to as not being material to the issues in this case.

The Court: Upon what issue in this case does the answer you seek by that question relate or bear?

Mr. Hokanson: Your Honor has indicated earlier that it should be established, or your suggestion that it should be established by witnesses here what qualifications this shipyard had to repair vessels.

The Court: Whether it is a competent ship repair?

Mr. Hokanson: Yes, Your Honor.

The Court: Do you seek to elicit an answer by this question which bears upon that?

Mr. Hokanson: Yes, Your Honor. I seek now to develop by Mr. Black the competency of the Commercial Ship Repair to do work of the type involved on the vessel Urania, and the experience and background of their personnel.

The Court: The objection is overruled. [40]

The Witness: Yes, we have a master lump sum contract with the United States Maritime Commission.

The Court: He says, "we have." You may now

(Testimony of Edward A. Black.)

be equipped, but we are concerned with at or before the time.

Mr. Hokanson: Yes, Your Honor, I will rephrase the question.

Q. (By Mr. Hokanson): Did you on or before August, 1948, have any contract or contracts with Government agencies for the repair of vessels?

A. We did. We had a contract with the United States Army, a master lump sum contract for repair and conversion, with the United States Navy, with the United States Maritime Commission, and the United States Coast Guard.

Q. For how long had you held those contracts?

A. We had held those contracts from the time that we entered business, or shortly after.

Q. Have you ever done work pursuant to those contracts prior to August 1948?

A. Yes. We had a job for the United States Maritime Commission on a Navy tanker.

The Court: What, if any, repair work or [40-A] alteration work did you do on that vessel?

The Witness: We did a complete alteration, bringing it from a dead ship up to operation under classification, the total contract being \$459,600. Work was completed in 36 calendar days.

The Court: What kind of work was done? What was the nature of the alterations?

The Witness: The alterations were, Your Honor, overhauling the entire engine room, putting the boilers through annual, building new crew's quarters.

(Testimony of Edward A. Black.)

The Court: Annual what?

The Witness: Annual inspection.

The Court: You mean conditioning the boilers so that they might be expected to better meet the requirements of inspection?

The Witness: Yes, Your Honor. The ship was a dead ship in lay up. It was tied to our yard. We had to do all the necessary requirements of the Coast Guard in order to put the vessel in operation, such as renewing the brick work, cleaning the tubes, fitting the valves, relagging steel pipes, putting hydrostatic tests on the boiler, open up all gunwales throughout [41] the engine room, and working over all the pumps and the motors, the ventilation system, building new crew's quarters for the crew, installing additional showers, installing new furniture, putting in maronite bulkheads in order to bring it from a Navy to a standard cargo tanker which would be accepted by the classification—when I say classification, I mean the American Bureau. This was all done to the complete satisfaction of the Maritime Commission inspectors, the U. S. Coast Guard inspectors and the American Bureau.

Q. You mean that was one job done for the Maritime Commission? Were there other jobs pursuant to these contracts?

A. Yes. We have done in the past year over 300 different vessels of all types for the Army, for the Coast Guard, for private owners, and for the Mari-

(Testimony of Edward A. Black.)

time Commission. We also worked on a—the reason I am picking out special jobs is to try to establish to the Court that our yard had——

Mr. Howard: Just a moment.

The Court: Proceed by question and answer. Do not give your reasons. Let the questions develop the reasons without your volunteering them. Ask him another question. [42]

Q. How many vessels have been repaired at your Winslow yard, if you know, in the past year?

The Court: Do you mean prior to the beginning of this work?

Q. I will add this qualification, prior to August, 1948, and during the period that you owned the yard.

A. I would say approximately 50 vessels.

Q. Did you, during the period prior to August, 1948, repair vessels other than those owned by government agencies?

A. We did.

Q. Would you state what type of vessels?

A. Cargo vessels such as Liberty ships, Victory ships, C-1, C-2, and C-3, companies such as American Mail Line, American-Hawaiian Lines, Pope & Talbot, Sudden and Christenson, Waterman Steamship Company, and various other leading companies in the shipping business.

Q. Where did you draw your personnel when you started the job on the Urania?

A. Our main organization was working for us,

(Testimony of Edward A. Black.)

and they had been in the Winslow yard for the past fifteen to twenty years, working in various crafts.

Q. How old is the Winslow yard?

A. I believe it is—— [43]

Mr. Howard: I object to that. This witness has testified that the Commercial Ship Repair started operations in April of 1946. I don't see it is material how old the yard is.

The Court: The Court is not entirely certain about this, but I have the impression that this witness at a stage earlier than this in his testimony, made some reference to some relationship or historical connection between the present ship repair concern and the Winslow Marine Ship Yard.

Mr. Howard: I will withdraw my objection.

A. The Winslow yard is approximately 42 years old, and in this yard from the time of its conception, there are some supervisors who are still working for us that worked there during the——

Mr. Howard: I move to strike that part of the answer as not responsive to the question.

The Court: It will be stricken.

Q. There are people in your employ and were there at this time in August, 1948 who had been employed in the Winslow yard prior to your purchase of it?

A. Yes. We had men in every craft who had been with the Winslow Marine for a long period of time, some of them as long as 30 years, and are still working for us, and were working for us at the time that the [44] Urania was undergoing repairs.

(Testimony of Edward A. Black.)

Q. What was the number of employees in your Winslow yard in August, 1948 if you remember?

A. Approximately 125.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. What was your business or occupation before 1941?

A. I was a sales manager at Totem Pontiac.

Q. For how long? A. For one year.

Q. Have you ever been to sea, serving on ships?

A. I have been to sea with the Naval Unit of the University of Washington on the U. S. S. Tennessee in 1945, to Honolulu and back.

Q. Is that your only sea experience?

A. Besides taking all the trial runs on seventeen Navy vessels and other repair jobs done at Winslow.

Q. What licenses do you hold, if any as an engineer or deck officer? A. I do not hold any.

Q. Are you a graduate of the University of Washington? A. No.

Q. Where did you obtain your college education?

A. University of Washington.

Q. You didn't graduate?

A. I did not graduate, no.

Q. What type of course did you take at the university?

A. I took one year of engineering, pre-engineering, business administration, and I had some studies in forestry.

(Testimony of Edward A. Black.)

The Court: Before questioning along this line is completed by all counsel connected with the case, I would like to have information as to whether or not there was any superintendent, any foreman, any person in the employ of this concern who had had any previous experience, and what sort of experience in work of this kind did such employees have? The Court is not sufficiently advised on this yet. I advise both counsel of that fact.

Mr. Hokanson: I propose to introduce considerable evidence on that, but I feel it would be better to introduce it by the witness himself rather than have Mr. Black testify to those qualifications.

Q. Did you have a gentleman by the name of Mr. Copeland working in your yard? A. Yes.

Mr. Hokanson: I object to that, Your Honor. He is not directly related. [46]

The Court: The objection is overruled.

Q. In what capacity was Mr. Copeland employed by you?

A. Mr. Copeland was Yard Manager.

Q. At Winslow? A. Yes.

Q. Is he in your employ now? A. No.

Q. When did he leave your employ?

A. He left before August 4th, I think it was sometime in the—I believe it was the 1st of August when he left our employ.

Mr. Hokanson: All of this examination is over my objection as not being related to the direct examination.

(Testimony of Edward A. Black.)

The Court: The objection is overruled. I might say that perhaps you are reluctant to do so, but pursuant to the Court's suggestion, or pursuant to some other inspiration, counsel for libelants did inquire of this witness concerning the qualifications of the libelants to do this job. That is a general subject and this falls within that general subject and it is proper cross-examination.

Mr. Hokanson: The witness having testified that he left prior to August 4th, 1948, I submit it would have no relevancy so far as this particular job is concerned.

The Court: The objection is overruled.

Mr. Howard: I would like to have this document marked as an Exhibit.

(8-4-48 letter marked Respondent's Exhibit A-1 for Identification.)

Q. Would you tell us what the capacity of your yard at Winslow is so far as dry docking of ships?

A. Four thousand ton marine railway.

Q. Many of these ships you refer to as having been repaired at your yard could not be dry docked there? A. That is right.

Q. Handing you what has been marked for identification as Respondent's Exhibit A-1, can you state what that is? A. It is a bid form.

Q. Does that document contain your signature?

A. It does.

Q. Do you recognize that as a letter that was prepared by you or under your supervision?

(Testimony of Edward A. Black.)

A. I do.

Q. Will you state to the Court please what relation that document has to the negotiations that you had conducted with the owners of the Tanker, Urania for [48] performing repairs or other services on that vessel in the fall of 1948?

A. It has the price on there of the original contract; not including the \$1500 for the chart room.

Q. Does that document represent your written confirmation to the owners of the tanker of the price quoted for performance of this work?

A. It was not a confirmation. It was the original bid.

Q. And the amount of that again, please?

A. \$39,780.

Q. Referring again to A-1, will you state what the figure is that is written in in ink on that document?

A. The figure is \$40,155, which includes the \$300 additional item, plus the \$75 additional item which was agreed upon between Mr. Antippas and myself in respect to item 48 and 49, and added on to the \$39,780. \$375 brings a total of \$40,155.

Q. In your letter or this document A-1 you now have before you, did you make any reference to the time required for the completion of these repairs?

A. Yes.

Q. What was that, please?

A. Eighteen working days.

Q. It is so stated in the document?

(Testimony of Edward A. Black.)

A. That is right. [49]

Q. I ask you again, does this document A-1 represent your written bid to the owners of the tanker for performance of this work on the tanker, Urania?

A. It represents a written bid with the exception that we in this written bid refer to the specifications which Mr. Antippas brought with him from New York, but which our price and our bid was representing from the specifications that were drawn and bid by Mr. Sweetin.

Q. Was any other letter or document sent by you to the owners of the respondent vessel setting forth the terms and conditions under which you proposed to undertake this work?

A. No, not to my knowledge.

Q. Then, does this represent the proposal that you made to them with the limitations you have mentioned as to the item of \$1500?

A. It does, with the exception which I so stated.

Q. That is as to the \$1500?

A. In that the specifications which we were bidding on—and it was understood by Mr. Antippas and Mr. Williams in our office on the final negotiations, the exact items that we were bidding on, they were so priced by items, and if added up by items, they will total the total sum as in our bid. [50]

Mr. Howard: I offer Respondent Exhibit A-1.

The Court: It is admitted.

(Testimony of Edward A. Black.)

Mr. Hokanson: May I examine the witness, your Honor, concerning this document?

The Court: Yes, you may, limited to the admissibility of this document. I will say that in the future I will try to pause for a moment after an offer of an Exhibit is stated to see if there is any objection to be noted. If I hear no response to the offer, the Court will then rule. If I hear any response, any objection or any request, I will consider that.

You may proceed now.

Mr. Hokanson: You state that the document which has been identified represents your agreement to perform the work, the time within which the work should be performed, and the amount of your original bid, is that correct?

The Witness: That is correct.

Mr. Hokanson: What was the understanding insofar as the specifications were concerned with respect to which that letter was signed?

Mr. Howard: I object to that as improper cross-examination insofar as the admissibility of this document is concerned. [51]

The Court: The objection is sustained.

The question is whether or not this Exhibit relates to the subject matter, or any issue in this litigation. What was developed on direct examination concerning the document indicated it was related to some phase or phases of this litigation, this repair job. If it does, it is admissible.

(Testimony of Edward A. Black.)

As to how much proof it contains, that is a matter for the fact tryer to determine. If it contains any statement relating to anything that enters into consideration of the matters and things alleged in these pleadings, then this is a proper Exhibit. You may disagree with the proof therein contained, but if it relevant, it is admissable. Proceed.

Mr. Howard: No further questions at this time, your Honor.

Mr. Howard: I re-offer A-1.

The Court: The Court's ruling will stand. It is already admitted.

(Respondent's Exhibit A-1 received in Evidence.)

TELEPHONE MAIN 3122

COMMERCIAL SHIP REPAIR

Specialists in All Types of Ship Repair



August 4, 1948

No. 12322
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

AUG 9 - 1949

PAUL P. OBRIEN
CLERK

Compania Navier Limitada Panama
c/o General Steamship Co.
Seattle, Washington.

Gentlemen:

Pursuant to the Invitation for Bids, Instructions to Bidders, and Specifications for Repairs, Renewals, Alterations and Additions to the vessel EX U.S. Navy Tanker Y073, dated June 25, 1948, all of which are made a part hereof, the undersigned hereby offers faithfully to perform all repairs, renewals, alterations and additions to said vessel in accordance with said specifications and plans for the sum of Thirty-nine thousand seven hundred and eighty dollars (\$39,780.00) and to complete such work in Eighteen (18) working days.

40,155

Very truly yours,

COMMERCIAL SHIP REPAIR

E. A. Block

E. A. Block
Co-Owner

Insert Pg 52

12766
a-1
DEPENDENT EXHIBIT
APR 7 - 1949

(Testimony of Edward A. Black.)

Q. Is there anything in your letter identified now as [52] Exhibit A-1 specifying that any payments are to be made for the work performed before the completion of the job?

Mr. Hokanson: I object to that on the ground that the document speaks for itself.

The Court: Read the question.

(Last question read by reporter.)

The Court: It is cross-examination in effect asking for his understanding of the purport of the letter and the objection is overruled. On direct examination, the question would not be proper, but on cross-examination, I believe it is. You may answer.

A. There is no reason in this particular bid form to put in qualifications of the payment, as it was merely a bid, and when the bid was made we did not know we would be low bidders or that the ship would be awarded to us.

Q. Was there subsequently any contract reduced to writing which provided for progress payments in advance of the completion of the work on the tanker, Urania?

A. No, it was all discussed in my office.

Q. I asked you if there was anything in writing on it.

A. No. Well, there is in that letter I wrote Mr. Antippas [53] in regard to another bill that they owed us.

The Court: Let us have in mind that we need to

(Testimony of Edward A. Black.)

be constantly finding ways and means of expediting rather than hesitating the progress of the interrogation of witnesses.

(10-4-48 Invoice marked Respondent's Exhibit A-2 for Identification.)

Q. Handing you what has been marked for Identification as Exhibit A-2, can you state what that document is, please? A. I can.

Q. What is it?

A. It is the bill to General Steam for progressive payment of \$25,000 for work performed aboard the Urania.

Q. Does it carry a date?

A. Yes, October 4th.

Q. Does that document have your signature on it? A. It does.

Q. In what connection?

A. Showing that we received payment.

Q. Of the \$25,000? [54] A. Yes.

Mr. Howard: I offer that in evidence.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-2 received in evidence.)

12322

INVOICE

Works in All Types
Ship Repair

CAUSE
RESPONDENT EXHIBIT
ADMITTED

APR 1949

COMMERCIAL SHIP REPAIR

PIER 34 - 601 STREET TERMINAL
SEATTLE 1, WASHINGTON

TELEPHONE

MAIN 3122

M.T. "Urania" and Owners
Compania Navier Limitada Panama
c/o General Steamship Co
1211 Fourth Avenue
Seattle, Washington

Invoice Date October 4, 1948

Invoice No 9-2 Winslow Div.

Requisition No

Contract No 9-1

Via Job Order No. 677

NET CASH

DESCRIPTION	PRICE	AMOUNT															
<p><u>Progress Billing No. 1.</u></p> <p>To progress payment No. 1 a/c repair and alteration to M.T. "Urania"</p>		\$25,000.00✓															
<table><tr><td>TORRAGE O.K.</td><td>RATES O.K.</td><td>COMPUTATION O.K.</td><td>APPROVED</td><td>CHECK NO.</td></tr><tr><td></td><td></td><td>✓</td><td>Sub</td><td>2001</td></tr><tr><td colspan="5">M/T Urania</td></tr></table>			TORRAGE O.K.	RATES O.K.	COMPUTATION O.K.	APPROVED	CHECK NO.			✓	Sub	2001	M/T Urania				
TORRAGE O.K.	RATES O.K.	COMPUTATION O.K.	APPROVED	CHECK NO.													
		✓	Sub	2001													
M/T Urania																	
<p><u>APPROVED:</u></p> <p><u>H. F. Williams</u> Mr. H. P. Williams Owners' Representative</p> <p>PAID COMMERCIAL SHIP REPAIR BY <u>Goodrich</u></p>																	

Sheet Pg. 55

(102)

(Testimony of Edward A. Black.)

(10-13-48 Telegram marked Respondent's Exhibit A-3 for Identification.)

Q. Handing you what has been marked for Identification as Exhibit A-3, can you identify that document? A. I can.

Q. Will you state what that is, please?

A. It is a telegram sent to Mr. Antippas on the 13th of October, telling him that——

The Court: That is not necessary.

A. sent to him by——

Q. Who was the sender of that telegram?

A. Mr. J. J. Featherstone, co-owner.

Q. Do you have personal knowledge of the time of day at which that was sent? A. Yes.

Q. When?

A. Approximately nine o'clock, p.m. [55]

The Court: What date, if you know?

The Witness: October 13th.

Q. That is Pacific Standard Time?

T. That is right.

Q. And that was sent then after the ship had been libelled?

A. That is correct.

Mr. Howard: I offer that in evidence.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-3 received in evidence.)

(Testimony of Edward A. Black.)

RESPONDENT'S EXHIBIT A-3

[Telegraph Form]

Western

Union

Sea360 Long NL PD 2 Extra-Wux Seattle Wash 13
Demetri Antippas-Compania Naviera Limitada
Panama Care Simpson Spence and Young NYK
Oct 13 PM 11:53

We are informed that Urania has arranged to sail eight AM 14 October 1948 stop Inasmuch as we have not received payment or consideration for same for performance of work on subject vessel this is to advise you that we are proceeding to libel vessel to insure payment of our invoices totalling 89,366.75 less payment of 25,000.00 stop We regret necessity for this action however at not having heard from you and this being a foreign flag vessel you will appreciate our concern stop We suggest you call Commercial ship repair J J Featherstone co-owner AM 14 1948 89,366.75 25,000.00.

Admitted April 7, 1949.

Q. Prior to sending of that telegram, had you made any demand upon the owner for payment of the repair bill? A. Yes.

Q. State what demands were made and to whom?

A. I made demand directly to Mr. Williams and

(Testimony of Edward A. Black.)

also to Mr. Antippas when he called me on the phone from New York.

Q. And that was on what date that he called you? A. October 4th.

Q. Was that conversation that you had on the telephone with Mr. Antippas relative to the full payment of [56] the bill, or was it relative to progress payment?

A. It was relative to the full payment of the bill, because we had already received our progress payment.

Q. Were you aware of the fact that General Steamship Corporation was acting in certain capacities as representing the owner of the vessel at Seattle? A. Yes.

Q. Prior to October 13th, had you made any demand upon General Steamship Corporation in Seattle of all or any portion of this account?

A. Yes.

Q. State your best recollection of when and to whom such demand was made.

A. I contacted Mr. Lund sometime on Monday afternoon, asking him if he had heard anything from Mr. Antippas in regard to the bills which Mr. Williams took with him to New York on Friday.

Q. Monday afternoon would be what date?

A. October 12th, I believe, or maybe it is the 11th, I would have to look. I would say the 11th.

Q. That is the only demand you made on General Steam at Seattle?

(Testimony of Edward A. Black.)

A. I made another one on Wednesday, the 13th, seeing if there had been any final payment received.

Q. Did you discuss the matter of this account with Mr. [57] Williams as to whether a payment was expected before the owners reviewed the account?

A. Mr. Williams was informed that before the ship would leave, the owners would have to pay the bill in full, and that is the reason that he left immediately upon completion, so he could review the bills with Mr. Antippas on Monday morning, October 11th, in Mr. Antippas' office in New York, so he could go over the bills with Mr. Antippas, but Mr. Antippas——

Q. That answers my question, I believe. In Libelants' Exhibit 3, you have made reference to foreign flag vessels. Is there some particular reason for making a distinction on foreign flag vessels?

A. There certainly is.

Q. Explain what that is, please.

A. On a foreign flag vessel under the Panamanian flag, owned by foreign owners, for operating as a foreign vessel, the ship may leave these waters and never return to the United States. If the owner so desires to keep it foreign, there is no way then that we could protect ourselves but libeling said vessel, unless it would return to a United States port. The difference between that and American flag vessels is that most of the American flag vessels are [58] represented locally and owned by people

(Testimony of Edward A. Black.)

who you can attach one of their ships or the particular ship that is operating within the waters of the United States at a later date to protect your bill.

Q. In other words, you require a different standard of payment as to foreign flag vessels than you do as to United States flag vessels?

A. We require that all foreign vessels pay their bills before they leave. However, people that have established themselves with us, and are American companies, we do not demand them to pay us before they take their vessels from our yard.

Q. Did you so indicate to Mr. Antippas at the time this job was undertaken? A. Yes.

Q. Did you make any effort to call Mr. Antippas on the telephone before October 13th?

A. No.

Mr. Hokanson: That is objected to as having already been covered, your Honor.

The Court: It is already answered. It will stand.

Q. Why didn't you endeavor to call him about this account?

A. The reason I didn't endeavor to call Mr. Antippas direct is because we were told by Mr. Antippas that [59] Mr. Williams was the man we should do business with, negotiate prices with, take all job orders and work with, and I didn't feel that I wanted to put Mr. Williams on the spot by going over his head to Mr. Antippas when he had left our place on Friday night to fly to New York to go

(Testimony of Edward A. Black.)

over bills with Mr. Antippas, with the understanding that Mr. Antippas would check the bills with him Monday, and then would get in touch with us or send payment through General Steam before the ship left the yard.

Mr. Howard: I have no further questions, Your Honor.

The Court: Any questions on redirect examination?

Redirect Examination

By Mr. Hokanson:

Q. In testifying that you did not call Mr. Antippas or attempt to call him, you have reference to dates prior to October 13, 1948?

A. Yes. I think that was the question.

Q. You have earlier indicated in your testimony that you attempted to call him on October 13, but because of the lateness of the hour, you were unable to reach him?

A. That is right.

Q. At the time of that attempt to call him, you had been informed of the sailing of the vessel? [60]

A. Correct.

Mr. Howard: I object to that as a leading question.

The Court: The objection is sustained. If you want to know the reason, you can ask him why, if it is material.

Mr. Hokanson: I will pass it, Your Honor.

Q. What do you do in your business as Commercial Ship Repair, you individually? What are your duties?

(Testimony of Edward A. Black.)

A. My duties are checking over estimates, general supervision over our jobs through our superintendents, dealing with the different contracts, dealing with the different governmental agencies, dealing with the banks, and in general, over-all overseer of the entire operation.

Q. Do you maintain your offices at Winslow or in Seattle?

Mr. Howard: I object to that as leading.

The Court: Sustained.

Q. Where do you maintain your offices?

A. My office is at Pier 66 in Seattle.

Q. Were you directly engaged in any supervisory capacity in connection with the repairs, alterations and renewals of the *Urania*?

A. Not after the final negotiations. The ship was then sent to Winslow and was under the Winslow supervisors. [61]

Mr. Hokanson: No further questions.

Recross-Examination

By Mr. Howard:

Q. As I understand your testimony on redirect examination, then you didn't attempt to contact the owners directly as to your intentions with respect to the repair bill until after the libel had been served and the vessel arrested?

A. The only attempt, as I so stated, was through Mr. Williams, and Mr. Williams was contacted at his home both on Monday and on Tuesday to see if

(Testimony of Edward A. Black.)

he had—if Mr. Antippas had gotten together with Mr. Williams.

Q. But you didn't send a telegram or call the owners until after the libel had been filed?

A. We expected payment, Mr. Howard, is the reason we didn't.

Q. I am just asking you the fact.

A. Pardon me.

Mr. Howard: No further questions.

The Court: Call the next witness.

(Witness excused.)

Mr. Hokanson: Call Mr. Lindgren. [62]

ARTHUR LINDGREN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. Arthur Lindgren.

Q. What is your residence?

A. Winslow, Washington.

Q. What is your employment?

A. General manager of Commercial Ship Repair, Winslow division.

Q. Were you so employed during the year of 1948? A. I was.

Q. How long have you been employed at the Winslow yard?

(Testimony of Arthur Lindgren.)

A. Are you speaking now at the Commercial Ship Repair, or at the yard?

Q. By Commercial Ship Repair.

A. Since December 17, 1947. May I add then that since the co-partners, Black & Featherstone, acquired the yard in December 1947. [63]

The Court: He first said December 17, 1947. I understood him to say that.

The Witness: That is right.

Q. Prior to that time, what was your employment?

A. I was employed by the Winslow Marine Railway & Shipbuilding Company.

Q. Where? A. At Winslow.

Q. In what capacity?

A. As general manager.

Q. For how long a period had you been general manager?

A. For approximately a year and a half.

Q. Prior to that, what was your employment?

A. Assistant general manager.

Q. For how long a period?

A. Approximately eight years.

Q. Prior to that, what was your employment?

A. Superintendent.

Q. Of what? A. Of the yard.

Q. Where? A. At Winslow.

Q. For how long a period?

A. Approximately a year and a half. [64]

Q. What is your total shipyard experience?

(Testimony of Arthur Lindgren.)

A. I was first employed there in 1921.

The Court: Give us the years.

The Witness: January 1921 until the present time.

The Court: How many years do you estimate that may be?

The Witness: 28, approximately.

Q. During that period, you have acted in the capacity of superintendent of the yard?

A. For a short period.

Q. What was your training and experience which lead to your position as manager of the yard?

A. Principally in the business end—I should say the business administration of the yard.

Q. What do your duties consist of as manager of the yard for Commercial Ship Repair?

A. General supervision of all its operations, such as obtaining of contracts, estimating, making prices, making business contacts for the purpose of obtaining business, negotiating various contracts with either Government agencies or private individuals, private corporations, the hiring, etc., of supervisors.

The Court: I would like for somebody to ask this witness who was helping him to do the work on [65] the date that this work was commenced, and go directly and promptly and concisely to the question of the competency of the personnel of this plant on the day that this work was commenced and during the time it was going on. Do not delay, just

(Testimony of Arthur Lindgren.)

give the appearance that you are expediting the examination and avoid giving the appearance that you are being too deliberate. The pace of this trial is altogether too slow.

Q. Would you state who the supervisors were at Winslow during the period from August 1948 through the middle of October 1948?

A. General superintendent was Mr. O. H. Lillehei.

Q. What is Mr. Lillehei's background, if you know?

A. As I recall it, he served his apprenticeship in the Bremerton Navy Yard as a machinist, worked there in various capacities in the planning and estimating department, for quite a period was connected with the office of the industrial manager in Seattle of the Navy Department, was employed by ourselves from 1940 to—when I say ourselves, I am now referring to the Winslow Marine Railway & Shipbuilding Company—to approximately December, 1945, was reemployed by the present Commercial Ship Repair Company.

Q. What capacity did Mr. Lillehei have at the Winslow yard during the war years?

A. First he worked as, I believe, a planner and [66] estimator, then an outside superintendent, then in various capacities in charge of outfitting of newly constructed naval vessels. During this period, of course, he had also general supervision of certain types of repair and conversion work, both

(Testimony of Arthur Lindgren.)

on Army, Navy and commercial vessels. In other words, during this 7 or 8 year period, he held approximately 4 or 5 different capacities.

The Court: Is that Mr. Lillehei?

The Witness: Yes, sir.

The Court: His employment comprises what, briefly, by way of resume?

The Witness: That of planner, estimator, outside superintendent, machinery superintendent, and finally assistant general superintendent.

Q. Who were the other supervisors?

A. At the time of the *Urania*?

Q. Yes.

A. The machinist foreman was Mr. Harold L. Woodman.

Q. State, if you know, what his background and experience is.

A. He served his apprenticeship at the Winslow Marine Railway & Shipbuilding Company from approximately 1916 to 1920. He holds a chief engineer's license for any ocean. He travelled extensively between Seattle, Europe and the Orient as a second, third, first and assistant on [67] vessels such as the *President McKinley*, vessels of that class. Then he worked for possibly four years in the Navy Yard as a first-class machinist. Following that time, since approximately 1930 to 1940, he was employed as a machinist foreman in the Winslow Yard. During the war period, he was general superintendent of the second shift, in complete charge of all operations.

(Testimony of Arthur Lindgren.)

Q. Where?

A. And is at present employed as machinist foreman.

Q. Who were the other supervisors during this period? A. Mr. Walter W. Oakland.

Q. What do you know of his qualifications?

A. He is employed at present as pipefitter foreman.

Q. Do you know his background and experience?

A. He has been employed at the Winslow yard since approximately—of my own knowledge, 1921, by hearsay, 1918.

Q. Is he now employed there?

A. He is now employed as pipefitter foreman.

Q. And was during the period of the Urania repairs? A. Correct.

Q. Who was the shipwright foreman?

A. The shipwright foreman is Mr. Andrew Gilmore.

Q. What is his background, if you know?

A. His background is approximately the same as that [68] of Mr. Oakland. To my knowledge, he has been employed at the plant in various capacities since 1921.

Q. Who was the steel foreman during this period? A. There were several.

Q. Who were they?

A. Two, namely, one was Mr. Elihu Pierce. The other was Mr. James Woodside.

(Testimony of Arthur Lindgren.)

Q. What is Mr. Pierce's background, if you know?

A. His background, so far as I know from personal observation, was foreman in charge of steel construction; that is, new construction of naval vessels, for a period of about 5 years at Winslow. Previous to that, according to his recommendation, he had spent about three years with the Newport News Shipbuilding & Dry Dock Company.

Q. What about Mr. Woodside?

A. Mr. Woodside has been employed intermittently at Winslow going back a period, to my knowledge, of possibly 20 years. Recently, for the past three years, he has been steel construction and steel ship repair foreman.

Q. Who was the electrical foreman during this period? A. Mr. Harold Wells.

Q. Do you know what his background is?

A. To my knowledge, his background consists of approximately 5 years spent in the equipping and outfitting [69] of naval vessels at Winslow. Previous to that, I have no personal knowledge.

Q. Who was the paint foreman?

A. The paint foreman was Mr. Pete Larson.

Q. Do you know his background?

A. I know him personally for a period of possibly 15 years, and he was employed by us all during the war period, I would say from 1942 for the duration, and since then has been employed by the new company, the Commercial Ship Repair, both on the Winslow side and Seattle operations.

(Testimony of Arthur Lindgren.)

Q. Who was the rigger foreman?

A. The rigger foreman at present is Mr.—I am sorry, I don't recall his name.

The Court: Was he such in August 1948, the man you are trying to think of?

The Witness: No.

The Court: Who was then?

The Witness: Mr. L. Pallender.

Q. Do you know anything of his background?

A. Not too much. I know he was a thoroughly competent man at the time he was employed by us.

Q. Who was drydock foreman during this period? A. Earl Callaham.

Q. Do you know anything about his qualifications or background? [70]

A. From personal——

The Court: What was his classification?

The Witness: Drydock foreman, otherwise known as dockmaster. He has been employed by the Winslow Marine Railway since approximately 1930, for a period of about 8 years, I would say, as a laborer leadman, and approximately 3 years as a laborer foreman, 2 years as an assistant dockmaster, and since the death of the old dockmaster, which occurred in 1944, he has been dockmaster to the present time.

Mr. Howard: I am sorry, I can't hear you.

The Court: Three years labor foreman, two years assistant dockmaster, from 1944 to the present time dockmaster.

(Testimony of Arthur Lindgren.)

Mr. Howard: Thank you.

Q. Do you have a Mr. Ekholm over there, or did you have during this period? A. Yes, sir.

Q. What capacity did he serve in?

A. He is shipwright foreman.

Q. What do you know of his background?

A. He has been employed at the yard since I have been there.

Q. In what capacity?

A. By hearsay again, I believe his experience goes [71] back probably 15 years before that. He is now shipwright foreman.

The Court: Was he such in 1948, in August?

The Witness: He was. Am I allowed to make a correction, sir?

The Court: Yes.

The Witness: Counsel asked me the first time who was the shipwright foreman. There is a distinction between Mr. Gilmore, who I stated was shipwright foreman, and Mr. Ekholm. Mr. Gilmore is properly the joiner foreman.

Q. Who was the labor foreman during this period? A. Mr. Earl Callaham.

Q. You have already discussed him?

A. Yes.

Q. How many people did you employ during this period in the office at Winslow?

A. You are speaking of the Urania period?

Q. Yes. A. Approximately 5.

Q. Stenographers, clerks?

(Testimony of Arthur Lindgren.)

A. I wish you would break it down to administrative or otherwise.

Q. Let's limit it to administrative personnel.

A. And clerical help as well?

Q. Which would be included. [72]

The Court: Ask him a question; is that a fact? Let the record show that what you say is a question.

The Witness: Five.

Q. Who was the warehouse foreman during that period? A. Mr. B. F. Stretch.

Q. What is his background?

A. His background is approximately 25 years with the Standard Oil Company, and employed by the Winslow Marine Railway and the Commercial Ship Repair continuously since 1943 to the present date.

Q. Is he also known as purchasing agent?

A. That is correct.

Q. Was Mr. Finn employed at that time in the yard?

A. For a portion of the period during which the Urania was there, yes.

Q. In what capacity?

A. As yard superintendent.

Q. What is his background, if you know?

A. I do not know too much about it, sir.

Q. What types of vessels do you now have under repair or construction at the Winslow yard?

A. At present we are converting the old fireboat Duwamish for the City of Seattle into a modern

(Testimony of Arthur Lindgren.)

fireboat. We also have the ferry Defiance for the City of Tacoma for underwater repairs, the FS 246 for the U.S. Army, and we were [73] just awarded the contract for the LT 347, I believe is the number, which is due in tomorrow or Monday.

The Court: The term "underwater repairs" may not be specific enough. What does that include?

The Witness: Installation of new tail shafts, changing of wheels.

The Court: By "wheels" do you mean propeller?

The Witness: Yes, sir. The vessel grounded in Tacoma, requiring the replacement of approximately 8 or 10 hull planks, a section of keel, and probably 8 or 10 frames, cleaning and painting.

Q. What are you doing to the Duwamish?

A. The Duwamish is being completely converted from a steamer. She was built in 1909 at Richmond Beach and is an extremely old vessel. We have completely gutted her—by that I mean stripped out all the old machinery, boilers, pumps, foundations, etc.—and are converting her by the installation of three 950 horsepower Diesel engines into the most powerful pumping plant as a fireboat in the world, at least, that is what the City of Seattle claims.

Q. Do you know Mr. Harry F. Williams?

A. I do.

Q. Was he there at Winslow during the period between August 4, approximately, and October 8, 1948, to your knowledge? [74]

(Testimony of Arthur Lindgren.)

A. He was, with the exception of a short period, possibly a week.

Q. What, if you know, was Mr. Williams doing during that period?

A. He was representing the Compania Naviera Limitada in connection with the conversion and repair of the Urania.

Q. Did you have dealings with Mr. Williams?

A. I did.

Q. Showing you Libelants' Exhibit 1, do you know what that is?

A. That is a specification for the repairs to the Motor Tanker Urania.

Q. Do you know whether any work in addition to the items listed on that exhibit was ordered by Mr. Williams during the period that he was at Winslow? A. It was.

Q. Would you describe what practice was followed with respect to additional work?

A. The general practice was to receive a request from Mr. Williams, following which a separate job order would be issued for the performance of the same if authorized by him.

Q. Did you have any direct negotiations with Mr. Williams during this period? [75]

A. I did.

Q. Would you describe what those negotiations were?

A. The negotiations covered a number of matters; for instance, the outlining of a particular

(Testimony of Arthur Lindgren.)

job order, phraseology of the same, the method in which he wanted the work done, and also the cost of the same.

Q. Can you describe specifically to whom he issued orders that the extra work be done?

A. He would issue them to myself, or in my absence, to the general superintendent of the yard.

Q. When such orders were issued, was anything else discussed with Mr. Williams?

A. Price, naturally.

Q. Did you ever discuss price with Mr. Williams on items that he ordered?

A. I did, but not on all items until the final negotiation was made.

Q. On those items that you did discuss with him, describe how the price would be arrived at.

A. The price would be arrived at in various ways. Oftentimes both he and I would go aboard the ship; for instance, he would point out to me he wanted, for instance, a port light put in or a piece of deck added, or this, that and the other, and we would look the thing over and come to a mutual understanding on it. He would describe what he wanted, and [76] in consequence, a job order would be issued to cover it. On those items we did have, prior to the issuance of a job order, a number of them on which we agreed to a price.

Q. Did you ever order any material at Mr. Williams' request? A. Not personally.

(Testimony of Arthur Lindgren.)

Q. Was material, to your knowledge, ordered at his request? A. Yes.

Q. Did Mr. Williams to your knowledge make any direct purchases for the *Urania*?

A. He did.

Q. To what extent?

A. I cannot say as to the amount of money, but I do know that he bought cylinder blocks, etc., from the Union Diesel Engine Company in Oakland.

Q. Did that necessitate his absence from Winslow? A. It did.

Q. For how long a period?

A. Approximately a week.

Q. Was he there all the rest of the period in question? A. Substantially, yes.

The Court: At this point we will take a ten minute recess. [77]

(Recess.)

(Job Order 678 marked Libelants' Exhibit 4 for Identification.)

Q. Handing you what has been marked for Identification as Libelants' Exhibit 4, will you state what that is?

A. That is a general specification of the additional work performed on the Motor Tanker *Urania*, over and above that contained in our original contract, consisting of items No. 1 through 48, of Job No. 678.

(Testimony of Arthur Lindgren.)

Q. Who made up that exhibit?

A. That was made up under my direction and in collaboration with others of the supervisors, and taken from the original shop orders issued to the various foremen in the yard covering all additional work on the *Urania*, and is more or less a consolidation and clarifies to a great extent the individual shop orders.

Q. Do you recognize the signature on the last page of that exhibit? A. I do.

Q. Whose signature is it?

A. H. F. Williams, owners' representative.

Q. Was it signed in your presence?

A. This was signed in my presence.

Q. When? A. October 8, 1948. [78]

Q. Where?

A. At our office in Winslow, Washington.

Mr. Hokanson: I offer that in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 4 received in evidence.)

LIBELANTS' EXHIBIT No. 4

Commercial Ship Repair

Winslow Division

August 6, 1948

Job Order No. 678

Vessel: M.T. "Urania"

Additional Work

1. Furnish services of qualified Diesel engine machinists to work in engine

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)
room as directed by Chief Engineer. Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer. Test six (6) exhaust and intake valves hydrostatically for leaks. Face valves and valve seats, grind in and test for tightness. Test six (6) air starting valves, grind in and make tight three (3) air starting valves. Clean up and test eight (8) fuel injection nozzles. Remove cylinder head studs from five (5) cylinders. Install new liners in five (5) cylinders. Disconnect and remove thrust shaft, fly wheel and other interference and lift crank shaft. Reassemble and replace after work is completed by ship's force. Make up necessary spacers for holding main bearing lower shells in place while fitting bearings. Make up two (2) special 1"x16" studs. Machine main bearing bridge gauge. Make up cylinder liner pulling gear. Make up bracket and lever for fuel nozzle test stand. Make up special equipment for engine throttle controls. Ream holes in new cylinder brackets to accom-

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

modate cam shaft. Install six (6) cylinders on engine. Make up gaskets for fuel pump head. Make up miscellaneous studs, bolts, and small parts for ship's force. Furnish eight (8) mechanics to accompany vessel on sea trial for making adjustments and corrections developing from same. Fasten engine room spare parts on bulkheads in locations as directed by surveyor. Furnish labor and material to pull main engine cylinder liners. Clean and wrap, and store in warehouse. Furnish labor and material and hang chain fall in warehouse to handle main engine pistons. Remove rings from pistons, clean grooves and have ready for new rings. Furnish labor and material to disassemble cam shaft. Stone journals, clean up bearing and gears and reassemble. Make up and install four (4) sets of air compressor valves as per sample furnished. (Total of sixteen (16) valves.) Furnish services of factory representative to supervise operation of diesel engines. Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

Engineer and Mr. Williams. Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed. Furnish labor and material to repair circulating system of main engine as necessary.....\$ 6,704.00

2. Referring to Item 47 of original contract, renew or repair the following valves, piping and fittings found broken or defective during test: Hot and cold water piping under floor plates and throughout engine room, main deck quarters and galley (cracked and broken from freezing). Renew hot water tank in engine room. Install steam coils and electric elements in same. Renew all steam heating lines on main deck to tanks, all piping running through pump room and under engine room floor plates to sea chests. Renew piping and fittings for steam heating lines to officers and crews quarters. Repair two radiators on main deck. Renew faucets and drains on three (3) washbowls. Renew piping and fittings on sanitary lines throughout ship. Renew steam reducing valve to heating system. Repair 21½" steam trap to

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

hotwell. Install smothering lines to forward hold. Install piping from after peak tank for suction to fresh water pump. Renew or repair piping, fittings, and valves on fire lines throughout vessel as necessary. Renew pipe lagging on deck steam lines and patch steam lines in quarters. Re-route piping from lube oil tank to poop deck. Install guards over all steam piping full length of main deck. Guards to be made up of steel plate and angles, suitably braced and stiffened. Provide drains on steam lines. Identify all steam smothering lines. Post notice at master stop valve for smothering system. Repair heating coils in cargo tanks as necessary. . . . \$ 7,930.00

3. Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer. Hydrostatically test cylinder heads and cylinder blocks on three (3) auxiliary engines, also exhaust manifolds. Test and overhaul fuel nozzles for three (3) engines. Test and recondition two (2) fuel pump and governor assemblies. Reseat valves in cylinder heads and grind in

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

valves on two (2) engines. Overhaul two (2) saltwater circulating pumps. Hydrostatically test cylinder heads and blocks on two (2) air compressors. Open out water end of bilge pump and close up after inspection. Install new diaphragm on boiler feed pump. Test crank shaft for defects on starboard auxiliary. Make up two sounding rods for tanks. Pull timing gear off cracked crank shaft and install on new crank shaft on starboard auxiliary. Make up fitting for governor control rods. Make up copper gaskets for engines. Furnish equipment to pull cylinder liners and re-install. Remove broken studs from cylinder block auxiliary engine and air compressor and engine filters.

Make up flanges for filters.....\$ 1,880.00

4. Furnish thirty-two (32) photostats of vessel as original.....\$ 46.00
5. Make up and install plywood flag box at after end of pilot house deckhead.\$ 45.00
6. Disconnect, remove to shop and overhaul the following motors as follows:
 - 1—Fresh water pump (Circ. 5-FB-127)
 - 2—Air Comp. #2 (Circ. FB-122)
 - 3—Fire Pump (Circ. FB-123)

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

4—Bilge Pump #2 (Circ. FB-130)

5—Lub. Oil Pump (Circ. FB-125)

Auxiliary Generator #1

Disassemble, wash out, bake dry, re-check, clean up as necessary, re-insulate (varnish), replace faulty or missing parts as necessary and reassemble. Auxiliary Generator #2

(See spare parts list.) \$ 2,205.00

7. Fair up all indents on shell as directed and after completion of repairs hose test. ABS requirement. After Peak Tank: Fair up three (3) deep floors and install suitable stiffening angle on each side of stern tube. ABS requirement. Chip out and weld crack on main deck as marked, ABS requirement. Renew section of damaged plating on wings of flying bridge. Flush off and weld up deck in way of vent pipes on forecastle head. \$ 985.00
8. Furnish labor and material to repair ship's lighting system as follows: Remove grounds from lighting circuit port side and below switchboard in engine room. Replace missing covers throughout ship. Repair open wiring where radio speakers have been removed. Reconnect wiring in locations as necessary \$ 665.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

9. Furnish labor and material to perform the following: Make two (2) new $\frac{3}{4}$ " galv. quarter shrouds for foremast. Replace three (3) $1\frac{1}{4}$ " turnbuckles. Overhaul on cargo hose boom:

1—3" Sheave block

1—2" Sheave block

5—Single sheave blocks

Replace on cargo hose boom:

$\frac{1}{2}$ " Wire of topping lift

$\frac{1}{2}$ " Wire on purchase fall

5— $1\frac{1}{8}$ " Galv. anchor shackles

Make two (2) new shrouds on mainmast\$ 492.00

10. Furnish and install flushing and sanitary pump complete with motor, rheostats, wiring, switchboard connections, etc.\$ 547.00

11. Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil. Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain.....\$ 780.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

- | | | |
|-----|--|----------|
| 12. | Furnish labor and material to make wooden plugs for each ventilator. . . . \$ | 35.00 |
| 13. | Furnish necessary labor and material to extend and relocate whistle at after end of chartroom. Overhaul whistles and prove in good working order. . . . \$ | 158.00 |
| 14. | Heating Boiler: Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing, furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler to 225 lbs. and prove tight to satisfaction of owners representative. Install patent gauge glasses, overhaul safety valves, etc. all to satisfaction of American Bureau. . . . \$ | 5,875.00 |
| 15. | Furnish labor and material to make up and install forty name plates in Greek \$ | 129.00 |
| 16. | Furnish labor and material to extend transverse bulkhead forward end of after house 36" to port on main deck, relocate fire station to suit. . . . \$ | 98.00 |
| 17. | Remove canvas and frame from after hatch, make up and install steel booby hatch. Furnish labor and material and install watertight door and | |

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

weather coaming at after end of
booby hatch on poop deck. Remove
existing hatch coaming and cover,
grind flush and finish old surfaces and
corners smooth.....\$ 475.00

18. Furnish labor and material other
than ship furnished to install radio
telephone complete. Furnish neces-
sary labor to install owner-furnished
radio direction finder.....\$ 960.00

19. Manufacture and install one (1) ad-
ditional vegetable locker.....\$ 125.00

20. Relocate kedge anchor on after main
deck and make suitable chocks for
same\$ 30.00

21. Life Boats: Furnish labor and ma-
terial to perform the following: Pro-
vide missing floor board. Provide and
install ridge spreaders. Provide and
install air tank to suit bow and stern
in the two (2) life boats. Provide
provision tanks in two (2) boats.
Make one (1) rudder as per sample.
Provide three (3) 10' oars. Furnish
and install masts and sails for two
(2) lifeboats. Mast dimensions to be
taken from present mast step. Fur-
nish labor and material to overhaul
lifeboat chocks and replace hinges..\$ 1,074.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

22.	Relocate navigation lights from top of pilot house to wings of bridge. Make hinged covers, install checker plate helmsmans platform.....	\$ 578.00
23.	Furnish labor and material to repair Captain's safe as necessary.....	\$ 10.00
24.	Alter all vents on poop and forecastle and main deck to meet ABS requirements. Same to be 18" high. Relocate forestay padeye for foremast. Provide plugs with chains attached and screens for all vent pipes. ABS specifications	\$ 585.00
25.	Install new duct to pump room exhauster as required by American Bureau. Approximately 1/8" plating....	\$ 685.00
26.	Raise all coamings in door openings to 18" to meet requirements of American Bureau. Hose test and prove tight	\$ 185.00
27.	Install linen lockers as directed by Mr. Williams.....	\$ 95.00
28.	Furnish labor and material and test air bottles hydrostatically according to ABS specifications.....	\$ 95.00
29.	Furnish labor and material to install hardwood grating around pilot house controls and wings of bridge as per instructions of Captain.....	\$ 235.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

- | | | |
|-----|--|-----------|
| 30. | Furnish labor and material to install voice tube from Engineers room to engine room. Furnish labor and material to change voice tubing leading from pilot house to pump room. New lead to go to engine room..... | \$ 95.00 |
| 31. | Remove and replace two mooring chocks from location port and starboard side of poop deck, aft to new location at life boat davits..... | \$ 70.00 |
| 32. | Furnish labor and material to install pipe awning stanchions on bridge, awning spreaders, etc..... | \$ 345.00 |
| 33. | Furnish labor and material to remove and replace lockers and build shelf for line stowage in steering engine room | \$ 360.00 |
| 34. | Furnish labor and material to manufacture metal cover to be installed on ladder in engine room space to protect gauge glass..... | \$ 15.00 |
| 35. | Manufacture and install hinged freeing ports port and starboard sides as required by American Bureau. Install safety bars across openings..... | \$ 75.00 |
| 36. | Furnish labor and material to fabricate and install hose stowage racks along starboard side of cat walk.... | \$ 660.00 |
| 37. | Purchase and install eight (8) swivel | |

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

	chairs as per instructions of Mr. Williams for officers mess room.....\$	175.00
38.	Purchase and install fourteen (14) Foamite extinguishers for vessel. Alter fire extinguisher hangers to accommodate Foam type.....\$	275.00
39.	Furnish labor and material to repair and alter fire hose racks throughout ship	\$ 105.00
40.	Furnish one (1) steel boarding gangway 28' long and make suitable stowage for same.....\$	525.00
41.	Purchase and install two (2) Inclino-meters	\$ 25.00
42.	Furnish labor and material to put sound power telephone in satisfactory operation.....\$	105.00
43.	Furnish labor and material to fabricate and install engine room floor plates and work bench.....\$	145.00
44.	Remove degaussing wires and conduit from deck, chip off all supporting brackets, grind deck smooth and prime paint. Blank off openings in bulkheads fore and aft and prove watertight	\$ 525.00
45.	Furnish and install starting motor for auxiliary generator.....\$	195.00
46.	Remove spare piston and relocate. Build in store room in starboard for-	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

ward corner of engine room over cargo pump motor. Storeroom deck to be constructed of diamond floor-plate and angle frame supported from deckhead. Sides to be expanded metal with door, hasp, padlock and access ladder to same. Install shelves as directed.....\$ 450.00

47. Remove two clipboards at after end of engine room starboard side and build in two metal tool lockers with shelves, doors, hasps and locks.....\$ 225.00

48. Furnish and install two rotary hand pumps to replace deteriorated pumps presently installed. One on fresh water pump, one to fuel oil day tank.\$ 115.00

\$38,191.00

Approved:

M/T "URANIA" AND
OWNERS
COMPANIA NAVIERA
LIMITADA PANAMA
/s/ H. F. WILLIAMS,
Owners' Representative.

Admitted April 7, 1949.

(Testimony of Arthur Lindgren.)

Q. Would you state the circumstances under which that document was made up?

A. This document was made up, as I stated before, in collaboration with the various foremen and supervisors in the yard at the request of Mr. Harry F. Williams in order that he might have a clearer final set of specifications than the job orders themselves indicated, and also for the purpose of negotiating the final prices covering additional work on the vessel.

Q. Did you go over the items thereon listed with Mr. Williams prior to making that up?

A. We did, in great detail.

Q. Did you discuss the prices listed with him?

A. We did.

Q. Did you deliver a copy of that into Mr. Williams' possession? Did he receive a copy of that?

A. He did, several.

Q. Did he sign more than one copy, if you know? [79]

A. He signed approximately 6 that we have in our possession.

(Invoice marked Libelants' Exhibit 5 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 5, can you state what that is?

A. That is an invoice from the Commercial Ship Repair to the Motor Tanker Urania and

(Testimony of Arthur Lindgren.)

owners, etc., invoice No. 102, Winslow division, dated October 8, 1948, covering Job Order No. 677 (9-1) and Job Order 678 (9-1), the total amount \$79,846, plus \$2392.68 Washington State sales tax, a grand total of \$82,238.68.

Q. Is the exhibit signed on the last page?

A. It is. It is signed, "Approved, M/T Urania and owners, Compania Naviera Limitada, Panama, H. F. Williams, owners' representative," dated October 8, 1948.

Q. Was it signed in your presence?

A. It was.

Q. By whom? A. By Mr. H. F. Williams.

Q. Do you recognize his signature?

A. I do.

Q. Was he furnished a copy or copies of that invoice? A. He was. [80]

Q. Did he sign more than one of those invoices?

A. He signed numerous copies, I would say 6 to 8.

Mr. Hokanson: I offer that in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 5 received in evidence.)

(Testimony of Arthur Lindgren.)

LIBELANTS' EXHIBIT No. 5

Invoice

Commercial Ship Repair
 Pier 66 Bell Street Terminal
 Seattle 1, Washington

M/T "Urania" And Owners
 Compania Naviera Limitada Panama
 c/o General Steamship Co.,
 1211 Fourth Avenue
 Seattle 1, Washington

Invoice Date October 8, 1948
 Invoice No. 10-2 Winslow Div.
 Via Job Order 677 (9-1)

Terms: Net Cash

Quantity Item No.	Description	Price	Amount
	To performing the following repairs, alterations and renewals to above named vessel, as outlined in specifications dated August 3, 1948, and our letter of quotation of even date:		
1.	Drydocking Drydock vessel for cleaning, painting and specified repairs. On completion of work undock vessel.		
2.	Underwater Painting Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line to light load line, port and starboard, with one coat of boot topping paint. Owner to furnish paint.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
3.	Hull Marking: Paint in draft marks at bow and stern. Paint name of vessel on bow, port and starboard. Paint name and hailing port of vessel at stern. Paint in Plimsoll marks, port and starboard sides.		
4.	Name Board Manufacture and install suitable name boards on bridge, port and starboard.		
5.	Sea Valves and Strainers Remove strainers from sea chest for examination. Clean and paint sea chests and strainers and replace strainers in good order. Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.		
6.	Tailshaft Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order. Repack stern gland with new packing.		
7.	Rudder Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.		
8.	Zinc Plates Renew zinc plates as necessary.		
9.	Propeller Clean propeller by wire brushing. Fair up and dress off minor indents in tips of blades. Separate work order to be issued to cover any major work found to be necessary.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
10.	<p>Cargo Tanks and Piping System</p> <p>Remove and dispose of approximately 3,000 bbls. of ballast and sludge presently in eight (8) cargo tanks.</p> <p>Clean tanks and piping system and certify "gas free" for hot work and internal examination.</p> <p>Test tank heating coils and report condition found.</p> <p>Open out all cargo valves, both on deck and in tanks, for examination.</p> <p>Overhaul valves, grind in, repack and rejoin and make up in good order.</p> <p>Free up all control reach rods of internal tank valves and repack at deck glands.</p> <p>Open vapor-vacuum valves for examination. Free up as required and close up in good order.</p>		
11.	<p>Cargo Pumps</p> <p>Open cargo pumps and motors and clean up for ABS examination. On completion of examination close up in good order.</p>		
12.	<p>Cargo Tank Ullage Covers</p> <p>Free up and lubricate all dogs and hinges on cargo tank ullage covers. Renew gaskets on cargo tank ullage covers. Prove in good order.</p>		
13.	<p>Fuel Oil Tanks</p> <p>Remove diesel oil from fuel tank located in way of engine room and clean tank.</p> <p>Certify tank "gas free" for internal examination and hot work. On completion of internal examination test tank hydrostatically to requirements of ABS. On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable storage for diesel oil while tank is being cleaned and tested.</p>		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
14.	Forepeak and Aft Peak Tanks. Drain and clean out forepeak and aft peak tanks for internal examination. It is assumed that these tanks are ballast tanks and are not contaminated. On completion of internal cleaning and examination, tanks to be coated with one coat cement wash. On completion of above work tanks to be hydrostatically tested to requirements of ABS. On completion of testing remove testing water and leave tanks dry.		
15.	Fresh Water Tanks Drain and clean out fresh water tanks located port and stbd. in way of engine space. Open tanks for internal examination. On completion of examination tanks to be coated with one coat cement wash. Tanks to be hydrostatically tested to requirements of ABS. On completion of test leave tanks full of fresh water.		
16.	Ballast Tank Conversion Foreward Deep Tank presently fit-as a ballast tank to be converted to use as diesel fuel tank as follows: Open tank and clean for internal examination. Connections between tank and forward bilge and ballast pump are to be removed and suitably blanked off. Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications. Pump to be suitably located in storeroom over tank space. Furnish and install fuel oil piping in general accordance with contract plant 837-7. On completion of work close up tank in good order and test		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
	tank and new piping to requirements of ABS. On completion of test remove all test water from tank and leave ready to receive fuel oil.		
17.	Gun Tubs and Ammo Lockers Remove all ammunition lockers and ready service boxes from decks. Remove splintel apron and gun pad from poop deck, plug anchor bolt holes watertight. Remove superfluous sections of forward gun tub leaving section in way of catwalk. Install suitable handrails and curtain plates in way of catwalk forward where sections of gun tub removed. Chip off all rough edges and grind smooth.		
18.	Ladders and Handrails Fair and refit all deck ladders and handrails where damaged and install new handrails where missing. Refit and rig bulwark stanchions at port and stbd. sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owner.		
19.	Port Lifeboat Fair out indents in hull of Port Lifeboat and restore to original good order.		
20.	Watertight Doors and Scuttles Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and afterhouse. Thoroughly lubricate and prove in good order.		
21.	Mushroom Ventilators Free up, lubricate and prove in good order all mushroom ventilators on weather decks.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
22.	Ventilation System Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.		
23.	Electrical System Megger test all electrical circuits, motors and generators throughout vessel to requirements of ABS and report conditions found. Reassemble and properly close up all open junction boxes, switch boxes and outlets. Renew fuses on all switchboards where standard fuses fitted. Report all deficiencies found in electrical system. Check markings on all electrical switch boxes and re-label correctly as found necessary. Separate order will be issued for all equipment renewals found to be necessary to restore good order and operating conditions.		
24.	Fire Fighting Equipment Check, test, and/or weigh all fire extinguishers and CO ₂ bottles and report condition found. Ships crew will recharge all liquid extinguishers. Separate order will be issued for recharging CO ₂ bottles as necessary.		
25.	Engine Controls and Telegraph Test out Pilot House controls to main engine and engine order telegraph and report condition found. Free up and lubricate mechanical equipment found in good order.		
26.	Steering Engine and Controls Test out steering engine and steering gear and report condition found. Free up and lubricate mechanical equipment found in good order. Remove locking device from rudder before testing.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
27.	Gauges and Indicators Check out all gauges and indicators throughout vessel and report condition found. Gauges and indicators where dismounted to be reinstalled and connected in good order.		
28.	Flag Pole Damaged flagpole at poop to be faired and refitted as originally installed. Check and repair electric connections and fittings to restore to good order.		
29.	Whistles Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.		
30.	Mooring Winch Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 H.P. Controls to be located in convenient location as directed and to be weatherproof.		
31.	Wheelhouse Doors Furnish and install two (2) new metal doors at wheelhouse, port and starboard sides. Frame to be fitted to accommodate new doors. Doors to be fitted with all new hardware including holdback and ajar hooks.		
32.	Navigation and Flood Lights Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.		
33.	Mast Rigging Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
34.	Screen Doors Renew damaged or missing screen in screen doors throughout vessel. Renewals to be bronze or copper screening.		
35.	Sprinkling System Sprinkling system to forward ammunition locker to be removed in its entirety.		
36.	Ammo. Storeroom Bulkhead Remove designated section of bulkhead at forward ammunition storeroom.		
37.	Plumbing and Heating Systems Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order. Vessel to supply any missing or damaged fixtures. Connect all piping, close all drains, test out and free up flushometers.		
38.	Crews Quarters—Port Side, Main Deck Furnish and install crews quarters to accommodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.		
39.	Crews Quarters—Starboard Side, Main Deck Furnish and install crews quarters to accommodate two (2) men in one (1) room on starboard side, main deck aft together with sanitary facilities adjacent thereto as per arrangement Plan #837-1 and in accordance with details specified in conversion specifications.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
40.	Messroom Furnish and install joiner bulkheads in way of officers messroom to suitable divided space and segregate from adjacent crew messroom as directed.		
41.	Officers Quarters—Boat Deck Furnish and install new section of deck house at port and starboard sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications. Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accommodate refrigerator space arrangement.		
42.	Captain's Stateroom Captain's Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.		
43.	Refrigeration Space and Equipment Furnish and install Refrigeration Boxes and equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled and restored to good order and re-installed with all fittings and controls in ship's Galley as directed. Space as detailed in Arrangement Plan to be enlarged by extending starboard bulkhead approximately three (3) feet to starboard side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed. Center section will not be insulated, but will be used for access		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

to Meat Box on Port Side and to Vegetable Room on starboard side. Controls for individual boxes to be located conveniently in Engine Space.

44. Galley

Remove domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator Space. Clean up service tables by wire-brushing to bare metal. Check out Galley electric range and report condition found. Repair cowlings over galley range to restore to original good order. Overhaul galley range to restore to original good order. Overhaul galley range exhaust blower as necessary to restore to original good order.

45. Clayton Boilers—(2)

Clean out two (2) Clayton Boilers located in Engine Space. Thoroughly check out, examine and test all parts and controls and report condition found.

46. Anchor Windlass

Check out anchor windlass, drive motor and controls and report condition found. Assemble parts in good order and test windlass to ABS requirements. Thoroughly lubricate.

47. Steam and Water Lines

Connect up and test out all existing fresh water, steam, sanitary and fire lines throughout vessel and report condition found.

Renewals found to be necessary to be covered by separate work order.

48. Panama Bitts

Furnish and install two (2) ten inch (10") Panama Bitts. Bitts to be located on Fo'csle Head, port and starboard, as directed.

49. Skylight Operating Gear

Free up and lubricate operating gear of engine room skylight and prove in good order.

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
50.	Chart Room Furnish and install Chart Room to be located aft of Captain's Quarters on Boar Deck approximately 8 feet x 8 feet x 7 feet. (Revised item to be issued giving details.)		
51.	Item Deleted.		
52.	Chain Pipe Covers Furnish and install chain pipe covers as required. Free up and refit existing dogs and covers on chain pipes and hawse pipes, port and starboard.		
53.	Pipe Lagging Check out entire vessel for defective pipe lagging and report condition found. All defective lagging to be renewed or repaired to restore to good order.		
54.	Dry Storeroom Shelving Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.		
55.	Vegetable Locker Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal sreen.		
56.	Door Locks Renew or repair defective joiner door locks throughout vessel. Furnish keys with new locks.		
57.	Pelorus Stands Remove two (2) Pelorus stands located at port and starboard sides of bridge. Flush off cuts and grind smooth.		

\$41,655.00

To performing the following additional repairs:

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
1.	Main Engines—Per Specifications.....	\$6,704.00	
2.	Renewing Piping, etc.—Per Specifications	7,930.00	
3.	Repairs to Auxiliaries.....	1,880.00	
4.	Furnish thirty-two (32) photostats of vessel as original.....	46.00	
5.	Make up and install plywood flag box at after end of pilot house deck-head	45.00	
6.	Electric Motors—Per Specifications Attached	2,205.00	
7.	Indents on Shell—Per Specifications Attached	985.00	
8.	Ship's Lighting System—Per Specifications Attached	665.00	
9.	Rigging—Per Specifications Attached	492.00	
10.	Flushing and Sanitary Pump—Per Specifications Attached	547.00	
11.	Anchor Chains — Per Specifications Attached	780.00	
12.	Ventilator Plugs—Per Specifications Attached	35.00	
13.	Ship's Whistles—Per Specifications Attached	158.00	
14.	Heating Boiler—Per Specifications Attached	5,875.00	
15.	Name Plates—Per Specifications Attached	129.00	
16.	Bulkhead, per Specifications Attached	98.00	
17.	Booby Hatch, per Specifications Attached	475.00	
18.	Radio Telephone & Direction Finder, per Specifications Attached.....	960.00	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
19.	Vegetable Locker, per Specifications	125.00	
20.	Keg Anchor, per Specifications		
	Attached	30.00	
21.	Life Boats, per Specifications		
	Attached	1,074.00	
22.	Navigation Lights, per Specifications		
	Attached	578.00	
23.	Captain's Safe, per Specifications		
	Attached	10.00	
24.	Pipe Vents, per Specifications		
	Attached	585.00	
25.	Ventilation Duct, per Specifications		
	Attached	685.00	
26.	Door Coamings, per Specifications		
	Attached	185.00	
27.	Linen Lockers, per Specifications		
	Attached	95.00	
28.	Air Bottles, per Specifications		
	Attached	95.00	
29.	Pilot House Gratings, per Specifications		
	Attached	235.00	
30.	Voice Tubing, per Specifications		
	Attached	95.00	
31.	Mooring Chocks, per Specs. Attached	70.00	
32.	Awning Stanchions, per Specifications		
	Attached	345.00	
33.	Line Stowage, per Specifications		
	Attached	360.00	
34.	Gauge Glass Cover, per Specs.		
	Attached	15.00	
35.	Freeing Ports, per Specs. Attached	75.00	
36.	Hose Stowage Racks, per Specifications		
	Attached	660.00	
37.	Purchase and install eight (8) swivel chairs as per instructions of Mr. Williams for officers mess room....	175.00	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
38.	Foamite Fire Extinguishers, per Specs. Attached	275.00	
39.	Fire Hose Racks, per Specs. Attached	105.00	
40.	Boarding Gangway, per Specs. Attached	525.00	
41.	Inclinometers, per Specs. Attached....	25.00	
42.	Sound Power Telephone, per Specs. Attached	105.00	
43.	Furnish labor and material to fabri- cate and install engine room floor plates and work bench.....	145.00	
44.	Degaussing, per Specs. Attached.....	525.00	
45.	Auxiliary Generator. Furnish and install starting motor for auxiliary generator	195.00	
46.	Store Room, per Specs. Attached.....	450.00	
47.	Tool Lockers, per Specs. Attached....	225.00	
48.	Auxiliary Hand Pumps, per Specs. Attached	115.00	\$38,191.00
			<hr/>
			\$79,846.00
3% State Sales Tax on Items 2 thru 57—Original Contract and Items 1 thru 47 on Additional Work			2,392.68
			<hr/>
			\$82,238.68

Date: Oct. 8, 1948.

Approved: M/T "Urania and Owners Compania Naviera
Limitada Panama.

/s/ H. F. WILLIAMS,

Owner's Representative.

(Invoice marked Libelants' Exhibit 6 for
Identification.)

(Testimony of Arthur Lindgren.)

Q. Handing you what has been marked for identification Libelants' Exhibit 6, can you state what that is?

A. That is an invoice from the Commercial Ship Repair to the Motor Tanker Urania and owners, invoice No. 10-1, Winslow division, covering spare parts, etc. and auxiliary machinery, totaling \$6920.46, plus 3 per cent Washington State sales tax in the amount of \$207.61, a grand total of \$7128.07.

Q. Is the document signed? A. It is.

Q. By whom, if you know?

A. It is signed, "Dated October 8, 1948, approved Motor Tanker Urania and owners, Compania Naviera Limitada, Panama, H. F. Williams, owners' representative."

Q. Do you recognize that signature?

A. I do.

Q. Was it signed in your presence? [81]

A. It was.

Q. Where?

A. In our office at Winslow, Washington.

Q. Was Mr. Williams furnished a copy or copies of that document?

A. Yes, he was, several.

Q. Did he sign one or more of the copies?

A. He signed approximately 5 or 6.

Mr. Hokanson: I offer the exhibit.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 6 received in evidence.)

(Testimony of Arthur Lindgren.)

LIBELANTS' EXHIBIT No. 6

Invoice

Commercial Ship Repair
Pier 66 Bell Street Terminal
Seattle 1, Washington

M/T "URANIA" and Owners
Compania Naviera Limitada Panama
c/o General Steamship Co.,
1211 Fourth Avenue
Seattle 1, Washington

Invoice Date October 8, 1948
Invoice No. 10-1 Winslow Division
Via Job Order No. 678 (9-1)

Terms: Net Cash

Quantity	Description	Price	Amount
	To furnishing the following spare parts for auxiliary machinery:		
2	New Departure Bearings #87506.....	4.30	
27	Generator Brushes (made up) 1.35 ea...	36.45	
1	New Departure Bearing #7314.....	14.47	
	Rewind and overhaul Armature for Main Dynamo	585.00	
1	Bearing Std. NH42170.....	8.82	
1	Bearing Std. NH4271.....	8.82	
3	Bearing Std. H40425	7.83 ea.	23.49
2	Bearing Std. H40426.....	7.83 ea.	15.66
3	Bearing Std. H40427.....	9.13 ea.	27.39
3	Bearing Std. H40428.....	9.13 ea.	27.39
1	Bearing Std. H40496.....	7.83	
4	Thrust Rings NH42169.....	2.60 ea.	10.40
12	Bearings Std. H5943.....	6.00 ea.	72.00
1	Crankshaft (B39546)	563.60	
50	Packings H9259.....	.28 ea.	14.00
30	Plugs 1" S715.....	.07 ea.	2.10
30	1½" Plugs .....	.19 ea.	5.70

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
24	040 Rings H65325.....	.94 ea.	22.56
24	040 Rings H65326.....	.94 ea.	22.56
48	040 H65327 Rings.....	.94 ea.	45.12
24	040 Rings H6354.....	.94 ea.	22.56
36	H5943 Con Rod Shells Std.....	6.00 ea.	216.00
1	#185 Tip Cleaning Kit for Cummins Engine Model HI.....		1.85
3	#71 Kits	7.96 ea.	23.88
3	#73 Kits	8.80 ea.	26.40
1	TQ-250 Torque Wrench.....		28.00
1	TQ-602A Torque Wrench.....		84.00
1	4011 Puller		18.40
1	ST-68 Tool		4.56
4	#73 Complete Kits—Gaskets..	8.80 ea.	32.50
2	H40423 Main Bearing Sets.....	21.01 ea.	42.02
2	H40424 Main Bearing Sets.....	21.01 ea.	42.02
6	H40425 Main Bearing Sets.....	7.83 ea.	46.98
4	H40426 Main Bearing Sets.....	7.83 ea.	31.32
6	H40427 Main Bearing Sets.....	9.13 ea.	54.78
6	H40428 Main Bearing Sets.....	9.13 ea.	54.78
2	H40496 Main Bearing Sets.....	7.83 ea.	15.66
18	H-9167-Y Valves	2.98 ea.	53.64
18	H-9176-X-1 Valves.....	2.77 ea.	49.86
2	DM-14623 Ring Sets.....	28.05 ea.	56.10
12	H-9216 Springs .....	.55 ea.	6.60
6	H-4795-7 Liners.....	16.43 ea.	98.58
18	H-9259 Packings.....	.28 ea.	5.04
	28½ Inches 2" Radiator Hose..	1.28 ft.	3.00
8	S-2350 Clamps .....	.24 ea.	1.92
1	H-41032 Section		6.11
30	S-715-1" Plugs .....	.07 ea.	2.10
30	S-701 1½" Plugs .....	.10 ea.	3.00
12	H-5943 Con Rod Shells.....	6.00 ea.	72.00
30	S-706 1½" Plugs.....	.19 ea.	5.70
1	H40418 Pulley		29.70
3	S-1792 Belts	1.78 ea.	5.34
6	X2236 Belts	4.14 ea.	24.84
24	H-T1263 Rings—Std.....	.58 ea.	13.92
1	Cylinder Block		533.60

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
1	Set 1/2" Gage Glass Cocks.....	2.50	
2	New Departure Bearings 87504.....	3.20	
2	Carbon Brushes (Made Up)..... 1.50 ea.	3.00	
1	1-1/10# #1 HMP Grease.....	1.93	
2	Ideal Brush Seaters #23008.....	1.00	
5	H10288-15 Shafts .....19.80 ea.	99.00	
5	H10288-39 Shafts .....16.50 ea.	82.50	
5	H10288-41 Spacer .....10.73 ea.	53.65	
5	H10288-44 Gear .....26.40	132.00	
5	H10288 34 Gear .....26.40	132.00	
10	H10288-27 Housing 5.78	57.80	
10	H10288-18 Spring ..... .77	7.70	
10	H10288-22 Rings ..... .72	7.20	
10	H10288-29 Guides ..... .61	6.10	
10	H10288-26 Flax Seal 3.03	30.30	
10	H10288-30 Carbon 1.32	13.20	
10	H10288-23 Snap Ring..... .26	2.60	
30	H10288-36 Keys ..... .55	16.50	
10	H10288-40 Gaskets ..... .22	2.20	
5	H10288-25 Gaskets ..... .22	1.10	
10	H10288-13 Retainers 2.09	20.90	
10	H-10288-19 Rings ..... .77	7.70	
3	S-1710 BR 6..... 1.35	4.05	
3	S-16002 BR 6..... 1.52	4.56	
6	H-10288-14 Bushings 9.24	55.44	
6	H-10288-35 Bushings 2.15	12.90	
20	H-10288-17 Slinger ..... .50	10.00	
20	S-720 Plugs ..... .53	10.60	
1	H-41037 Sections 7.26	7.26	
3	S-1800 Seals 1.16 ea.	3.48	
3	S-10109 Seals 1.66 ea.	4.98	
50	H-62727 Lock Plates..... .02 ea.	1.00	
50	H-9427 Lock Plates..... .05 ea.	2.50	
20	S-2470-C Gaskets ..... .50 ea.	10.00	
20	103755 Gaskets ..... .52 ea.	10.40	
20	3068B Gaskets ..... .24 ea.	4.80	
2	HQ-504 Regulator 22.70		
1	110V 50 Amp. Harman D.C. Rev. Cur- rent Relay	8.60	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
3	9S-4223-L Type FIX Switch.....	14.25	
1	ST-68 Tool	4.56	
4	Complete sets carbon and rubber seals for Sherwood circ. Water Pump \$4494	22.92	
	Factory overhaul fuel pump No. 06H32586	385.80	
3	H66739 Gauges	5.64	
3	H66733 Gauges	5.61	
3	H66735 Gauges	5.64	
3	H66737 Gauges	5.64	
2	S-1814 Switch	6.18	
1	H-66741 Ammeter	1.88	
	Style 926F Fulton Sylphon control valve, #1-15869 range 130/160F.....	41.60	
2	BM-14690 Tubes	10.78	
4	S1076 Nuts	2.20	
20	S1077 Grommets	5.80	
	2" Cummins sea water pressure 0/30....	6.13	
2	H10288-3 Housings	99.00	
2	H10288-3 Gears	52.80	
2	H10288-34 Gears	52.80	
2	H10288-15 Gears	39.60	
2	H10288-39 Shafts	33.00	
2	H10288-41 Spacers	21.46	
4	S2643 Thermostats	26.40	
	Services of factory representative (Cum- mins) to supervise operation of Diesel engine	31.76	
20	Non 20 Buss.....	1.32	
20	Non 30 Buss.....	1.32	
18	Only #F825-0 Winslow Fuel Elements	18.90	
	Charge for technical services.....	5.00	
	Transportation	1.75	
1	#2501-7 Ward Leonard Battery charg- ing rheostat	44.50	
2	H-41272 Pulley	29.48	
1	S3005 Tachometer	30.78	
1	93899 Angle Elbow.....	7.50	
20	S-3062 B Gaskets.....	4.80	
1	S-3005 Tachometer	30.78	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
4	S2668 Joints	2.64	
4	S3062A Cartridges	5.80	
2	92899 RA Elbows.....	15.00	
3	42" Tachometer Cables.....	11.25	
1	Lub. Oil Temp Gauge—Tubing 26" long	11.55	
1	S-2313—93899 S.W. Tac. Head.....	11.72	
	Labor and material to factory overhaul and place in good operating condi- tion one (1) only fuel pump and gov- ernor assembly for 6 cyl. Cummins Model H.F. Serial 32829.....	46.74	
1	Complete set—Spare Boiler Coils.....	900.00	
	Factory overhaul of tachometer to place same in good operating condition.....	33.75	
	Air express and freight on above listed parts	44.93	
	Long Distance Telephone calls to New York City	58.60	
			<hr/>
			\$6,291.33
	Plus 10% Handling Charge.....		629.13
			<hr/>
			\$6,920.46
	3% Sales Tax.....		207.61
			<hr/>
			\$7,128.07

Date: Oct. 8, 1948.

Approved: M/T "Urania" and Owners, Compania Naviera
Limitada Panama./s/ H. F. WILLIAMS,
Owner's Representative.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Do you have a personal knowledge of the
experience of the dockmaster, Mr. Earl Callahan?

A. I do.

(Testimony of Arthur Lindgren.)

Q. Would you say he was a competent dock-master? A. I certainly would.

Q. Were you present when the *Urania* was dry-docked?

A. Either at the time or very shortly afterwards, within two hours, I would say. [82]

Q. Were you present when the *Urania* was returned to the water?

A. I don't believe so; I cannot recall.

Q. Are you familiar with the bleeder plug that was drilled in the bottom of the vessel, in the hull of the vessel? A. I am.

Q. Are you aware of the fact that that was left open when the vessel was returned to the water?

A. I was.

Q. Isn't it a fact that that necessitated redocking the vessel? A. It did.

Q. How long did that require to redock the vessel?

A. I would have to review our log books in order to tell you that, but I would say offhand a period of approximately two hours.

Q. When was that done?

A. Several days following the original launching of the vessel.

Q. That is your best recollection of the time?

A. That is my best recollection.

Q. Would that take care of the period required to place the vessel on the drydock and pump the dock out and then return the ship to the water?

(Testimony of Arthur Lindgren.)

A. Understand, this is not a dock that pumps out, [83] it is a marine railway on inclined tracks. The time consumed in hauling a vessel out and returning to the water is much less than it would be in an ordinary drydock where it is pumped out. Two hours would be sufficient, yes.

Mr. Hokanson: This testimony I move be stricken from the record on the ground it is not pertinent cross-examination at this time. There is nothing in the pleadings here with reference to the drydocking of this vessel which would allow an issue to be made up at this time concerning what is being testified to.

The Court: Does it or does it not relate to the competency of persons employed by the libelants?

Mr. Howard: It does, if the Court please, and also the allegations in our cross libel.

The Court: As to what?

Mr. Howard: As to delay of the vessel at the libelants' yard.

The Court: You may respond, if you wish.

Mr. Hokanson: If we are to take this matter out of order at this time, I would like to know. I had assumed from the outset we were going to proceed with the libel and the answer thereto, rather than to interject issues that may be framed by the cross libel and the answer thereto.

The Court: The whole case is being tried, and the [84] Court prefers to proceed in this way as to this.

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Very well, your Honor.

Q. Relating my last question now to the operation of a marine railway rather than a drydock being pumped out, what would be the total over-all time required to haul out the vessel and then to return the vessel to the water?

A. The total over-all time required under ordinary circumstances to haul a vessel from starting time until the floor of the dock came out of the water, would be approximately 45 minutes.

Q. Then to return the vessel to the water?

A. Somewhat less, possibly 20 minutes.

Q. Do you know how long it took to haul the vessel in this particular case? A. I do not.

Q. You have stated on direct examination that this additional work was requested by Mr. Williams and separate job orders were issued, is that correct? A. That is correct.

Q. Did you receive any written request from Mr. Williams for that work?

A. At times, portions of it.

Q. Have you brought with you any requests that were received from Mr. Williams for additional work? A. I have none. [85]

Q. I take it that on some occasions there was nothing in writing? A. Correct.

Q. You mentioned that price was discussed when the additional work was requested by Mr. Williams? Will you amplify that as to what the extent of your discussion was as to the price of the work?

(Testimony of Arthur Lindgren.)

A. You would have to elaborate on that a little bit to give a direct answer, or make it more specific, I should say.

Q. In Libelants' Exhibit 4 which you have before you there, item 1 on page 1 shows a total of \$6704, is that correct? A. Yes, sir.

Q. Was that figure discussed with Mr. Williams before the work was performed?

A. No. That was a figure that would have been impossible of discussion before the work was performed.

Q. Refer now please to——

A. Because of the impossibility of ascertaining everything required to be done on the main engines prior to their being opened up and examined. Furthermore, this work was entirely under the jurisdiction and being performed by the ship's crew, and we had no direct means of ascertaining what would be required. Therefore, the price could not [86] be discussed until the entire item 1 was finished.

Q. Refer, please, to item 2. Was that price discussed with Mr. Williams before?

A. The same applies there.

Q. How about item 3? A. The same.

Q. How about item 4?

A. That speaks for itself.

Q. Was it discussed with Mr. Williams?

A. Yes.

Q. That amount was indicated to him?

(Testimony of Arthur Lindgren.)

A. That is right.

Q. Refer to item 6, please. Was the price for that work discussed with Mr. Williams before the work was undertaken? A. No.

Q. Refer, please, to item 9. Was the price for the work involved in item 9 of Exhibit 4 discussed with Mr. Williams before the work was undertaken?

A. I take it I am not allowed to interject—

The Court: No. The answer is to be made in response to questions.

Mr. Hokanson: Answer the question, if you can.

A. Item 9, no.

Q. Refer, please, to item 14 on page 4 of this exhibit. [87] Was the price for that work discussed with Mr. Williams before the work was undertaken? A. Yes.

Q. And what is your recollection as to the discussion that you had with Mr. Williams as to item 14 and the price of that work?

Mr. Hokanson: At what time, counsel?

Mr. Howard: Before the work was undertaken.

A. The principal discussions covering item 14, as I recall it, were held between Mr. Williams and Mr. Featherstone; and when you say discussions as to price, it was a matter of a mutual conference as respects the costs of the installation of an entirely new boiler, repair of the present boiler, if possible, or the rebuilding of the present boiler, and everything in connection with it. It was indicated that something in the nature of that cost would be

(Testimony of Arthur Lindgren.)

required to place that boiler in that condition. When I say Mr. Featherstone and Mr. Williams, I myself was a party to those discussions.

Q. Isn't it a fact that the prices shown on Exhibit 4 were determined after the work was completed? A. The majority of them, yes.

Q. So that in the majority of the cases, you did not discuss the price with Mr. Williams before the work was undertaken? [88]

A. I would say in the majority of them there was no firm price given, but there certainly were discussions as to the approximate cost.

Q. Referring back, if you please, to item 1 of Exhibit 4, will you state how you determined the figure of \$6704 which is shown as the total for that item?

A. We kept running costs of the work as it went along.

Mr. White: Your Honor, at this point I am going to object to that on the ground that we have admitted in evidence documents signed by Mr. Williams, the owners' representative. The witness has testified that they were all signed by Mr. Williams, bearing his signature, approved, that the prices were negotiated with him, that he had full authority to represent the company; and any question concerning how these items were arrived at in price at this time is immaterial on the theory that we have here an account stated, a negotiated contract price. Inquiry into the background of it is not necessary under the libelants' theory of the case,

(Testimony of Arthur Lindgren.)

and if there is to be any further questioning along this line, I respectfully request the Court to hear argument upon that issue at this time.

The Court: What theory have you? Do you deny that it is an account stated? [89]

Mr. Howard: Yes, your Honor, we do for the reason that we do not believe that the approval as shown on the invoices is necessarily an approval as to the prices, and we do not believe that the fact of the extent of the authority of Mr. Williams has yet been established, so that we feel it is appropriate at this time to examine these witnesses as to the manner in which these charges were arrived at; and furthermore, by this and other witnesses we will undertake to prove there were limitations on the authority of this agent, and that those were known to the parties we were dealing with.

The Court: I will hear you further on the subject, Mr. Hokanson.

Mr. Hokanson: With your Honor's permission, Mr. White will argue the matter.

Mr. White: I think in order to shorten this, we might make our position very clear. It is our position that we have introduced these signed invoices; they become, in effect, contracts. We have no objection to the cross-examination of any witness as to the qualifications of the personnel or whether the work was properly performed, but they cannot inquire, in our view of the case, into the reasonableness of the price or into any such matter as

(Testimony of Arthur Lindgren.)

that, inasmuch as we [90] have here an account stated, and there is nothing in the pleadings whereby they seek to impeach the account stated. An impeachment of an account stated is what must be pleaded as an affirmative defense.

I direct the Court's attention to the fact that a state law applies with respect to determination of what constitutes an account stated, with a Ninth Circuit case, and the universal general rules with respect to an account stated.

In the restatement of contracts, section 422, it is said that where you have a document which, even if it is submitted to the other side and there is no approval, if it is held on to long enough, it becomes an account stated.

Here we have a much stronger situation. We have a situation where the owners' representative has signed and approved the invoices. We therefore, in effect, have a contract. We have put on the contract and they cannot go behind the reasonableness of the price. That is our whole contention, your Honor, and with respect to the authority of an agent to state an account, I have authorities on that. It is our contention that there is no question but that Mr. Williams had authority to state the account.

The Court: If you ask this witness this question [91] now, he will not properly be permitted to ask this witness the same question at any other time in the trial. In view of all that has been said

(Testimony of Arthur Lindgren.)

by counsel on both sides, the objection is overruled.

Mr. Howard: Will the reporter read the last question and answer, please?

(Last question and answer read by the reporter as follows:

“Q. Referring back, if you please, to item 1 of Exhibit 4, will you state how you determined the figure of \$6704 which is shown as the total for that item?

A. We kept running costs of the work as it went along.”)

Q. Were you through with your answer?

A. Yes.

Q. Have you brought with you today the records of these running costs you are referring to?

A. I believe we have.

Mr. White: May the record show my objection goes to all this line of questioning?

The Court: Yes.

The Witness: I am not prepared personally. Our accounting department handles the matter of costs.

Q. Do you know whether any statement has [92] been prepared showing such items as the number of hours of labor and the items of material that go into the figure of \$6704 for this item 1?

A. Yes.

Q. Do you have that with you?

A. No, I haven't.

(Testimony of Arthur Lindgren.)

Q. Can you state who has that record?

A. The record such as that is in the possession of our counsel, I believe.

Mr. Howard: Counsel, will that record be available if I move for production of it at a later time?

Mr. Hokanson: For the record, in view of the Court's ruling, it may be necessary for me to bring the record, and if the Court decides that it is necessary to go into the matter of the reasonableness of these items, we will bring the necessary supporting evidence to show the breakdown of labor and material.

Mr. Howard: At that time the record that he has referred to, the reconciliation, will be made available?

Mr. Hokanson: That is correct.

The Court: I still think counsel are proceeding too slowly in the business of questioning witnesses. I think you should proceed more expeditiously to propound questions.

Mr. Howard: I will undertake to comply with your order.

Q. As to the parts for the Union Diesel engine you referred to in your direct examination, do you know of your own personal knowledge whether Mr. Williams ordered and purchased those?

Mr. Hokanson: That is objected to as having been covered in direct examination.

The Court: Overruled.

A. I do not.

(Testimony of Arthur Lindgren.)

Q. You stated on direct examination that at the time these invoices were signed, you conferred with Mr. Williams for the purpose of negotiating final prices on the work, is that correct?

A. Yes, prior to the signing of the invoices, we negotiated final prices, yes.

Q. Is it not a fact that at that time Mr. Williams advised you that he could not approve the amounts and that they would have to be referred to the owners at New York for adjustment?

A. He definitely did not.

Q. Do you recall any discussion indicating that Mr. Williams intended to refer this to the owners at New York [94] for adjustment and determination of the price?

A. No, sir. He would naturally refer to his owners in New York, it being their promise to pay it. However, I was under no—not at any time was I under any apprehension but what Mr. Williams' final approval of the specifications and the invoices themselves would close the matter so far as we were concerned.

Q. Will you state who was with you at the time that you referred to, when Mr. Williams signed the invoices and specifications?

A. Our chief accountant, Mr. F. J. Harper. Mr. Featherstone, I believe was present.

Q. Anyone else?

A. Several stenographers. Do you want their names?

(Testimony of Arthur Lindgren.)

Q. No. If they are stenographers, I am not interested in their names. Isn't it a fact that at that time Mr. Williams indicated to you that he was signing these invoices under protest, because he considered that some of the charges were excessive?

A. No, I do not think so, because I had previously drawn up several specifications for his perusal, for his comments and his possible reduction, etc. We went over these various items, rewrote the thing twice, came to a mutual agreement on the price of each and every individual item. He signed the specifications and he signed the [95] invoices and I assumed that he was happy about it.

Q. Do you recall any discussion with him where he indicated any dissatisfaction with the amounts charged?

A. I do not. He was somewhat surprised at the total amount, but the individual items were quite satisfactory to him.

Q. Referring, please, to Libelants' Exhibit 6, can you state how the amounts or the prices as shown opposite each item on that invoice are determined?

A. Those are copied directly from the invoices submitted to the Commercial Ship Repair by the Cummins Diesel Engine Company, and represent the true cost plus the handling charge at the end of 10 per cent. When I say Cummins, with the exception of one or two items which cover other parts obtained from other vendors or furnished directly by Commercial Ship Repair.

(Testimony of Arthur Lindgren.)

Mr. Hokanson: May it please your Honor, for the record and so that my silence may not be construed as a waiver, I again repeat the objection earlier made, that this line of questioning constitutes impeachment of a written instrument and signature, which under the rules of parol evidence cannot be collaterally attacked, and my objection continues as to all questions which go behind the contract price.

The Court: I think I may appropriately [96] explain the overruling of that objection, which is also repeated at this time, and that is that suppose you were wrong about this being an issue properly tendered in the pleadings, not your libel but in the cross libel or the answer, and suppose the Court agreed with you upon that and then the Court disposes of this on that theory and acts as you wish the Court to act.

You then have the case decided without receiving and considering evidence upon that issue. If you and the Court were wrong in the position on it, then you would have a case tried—I believe the estimate is a considerable length of trial—and you would have to do it all over again.

Isn't it much better to hear the evidence and after all the evidence is in, for the Court to determine then which evidence is the more weighty, or whether or not the evidence is properly received; and if so, if the Court should decide it isn't, the Court can exclude it and disregard it.

(Testimony of Arthur Lindgren.)

That is the theory upon which the Court's mind works upon this objection. I am not yet absolutely certain as to what all the issues may be that are tendered in the cross libel which are not available to the respondents under a general denial, but I think the better course is to receive the evidence. (That [97] is the reason I am doing it, so the objection is overruled.

Mr. Hokanson: Then may the record show that I need not continue my objection and that it goes to all of this?

The Court: Is that agreeable to counsel for the respondent?

Mr. Howard: That is agreeable, your Honor.

The Court: It is approved by the Court.

Q. Referring again to Exhibit 6, do you have with you the manufacturers' invoices for the various items shown?

A. It is in the possession of our counsel, yes.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. As a matter of clarification, referring to Exhibit 5 before you, what does item 677 on the invoice represent?

A. Item 677, or rather, Job Order 677 as written covers the job order assigned the hull for that portion of the work covering the original contract in the amount of \$41,655, listing items 1 to 57 inclusive.

(Testimony of Arthur Lindgren.)

Q. What does 678 represent?

A. 678 represents all additional work as covered in [98] Exhibit No. 4. The specifications in Exhibit No. 4, items 1 through 48, in the amount of \$38,-191.

Q. Referring to Exhibit 6, at whose request was that invoice made up?

A. This invoice was made up at the request of Mr. Harry F. Williams.

Q. Did he state to you why he wanted it made out in that fashion?

A. Not necessarily, but it is customary for spare parts and machinery parts, if they are bought for a ship separately from ship repairs, to tender a separate invoice, and he wanted it. In this case, however, a great many of these parts were turned over to the chief engineer. Some of them were ordered by the chief engineer. Some of them were ordered by Mr. Williams himself. In this connection——

Q. Were there any writings in which you and Mr. Williams participated relating to the computation of these prices?

A. I don't quite follow you. Any writings?

(Job Order 678 work sheet marked Libelants' Exhibit 7 for Identification.)

Q. Handing you what has been marked Libelants' Exhibit 7 for identification, can you state what that is?

(Testimony of Arthur Lindgren.)

The Court: "If you know" would be one proper way.

Q. If you know? [99]

A. That represents the preliminary consolidation of approximately 110 or 115 job orders originally issued to cover additional work on the vessel.

Mr. Howard: At this time I would like to object to any further examination concerning this document for the reason that I do not believe it is proper redirect examination.

The Court: Do you care to respond to the objection, Mr. Hokanson?

Mr. Hokanson: May it please the Court, counsel in cross-examination has undertaken to impeach the witness' statements with respect to the manner in which these prices were arrived at. I am submitting this document at this time as evidence of negotiations by and between Mr. Williams and the witness with reference to fixing the price of the additional work.

The Court: As tending to establish knowledge on the part of Mr. Williams before the matter was finally concluded and approved by him, or what do you seek to prove?

Mr. Hokanson: Tending to show there were negotiations and bargaining, so to speak, over the amount fixed in the final job order which is No. 678, Exhibit 5, I believe, in evidence.

The Court: Which bears the written signature as approved [100] by Mr. Williams, is that your theory?

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Yes, your Honor.

Mr. Howard: If the Court please, that is a subject they went into on direct examination as to negotiations of the final prices on the work.

The Court: The objection is overruled. Most of the emphasis in the matter was had in the cross-examination.

Q. There are certain writings on that document. Do you know who wrote the ink notations on the exhibit?

A. Yes. They were written by Mr. Williams.

Q. In whose presence?

A. In mine. Some of them, I believe, are mine, possibly one or two.

The Court: Ask him another question.

The Witness: It would be hard to identify immediately.

Mr. Hokanson: I offer the exhibit in evidence, your Honor.

Mr. Howard: I object to the exhibit for the reasons stated in my objection to the examination of this witness. It is a proper subject for direct examination but not for redirect examination.

The Court: That objection is overruled.

Mr. Howard: I further object to the admissibility [101] of this. I don't think it has been sufficiently identified.

The Court: I do not know whether there is some other aspect of it that you are not speaking of definitely, or what it is.

(Testimony of Arthur Lindgren.)

Mr. Howard: May I examine the witness very briefly on this?

The Court: Concerning the admissibility of the document only.

Mr. Howard: You mentioned some of the notations on here were by Mr. Williams and some by yourself. Are you able to differentiate the notations you made on this from those made by Mr. Williams?

The Witness: I would say 90 per cent of them, at least.

The Court: Were what?

The Witness: When he says, "differentiate," the thing is so full of pencil scratches it is hard to determine what portion he is referring to.

The Court: Whose figures in pen and ink comprise 90 per cent, and whose comprise the remainder?

The Witness: I would say 90 per cent of them comprise mine, and possibly 10 per cent represent Mr. Williams'.

Mr. Howard: Are you able to differentiate [102] between those as a matter of handwriting?

The Witness: Yes.

Mr. Howard: I have no further questions.

Mr. Hokanson: May I examine the witness further?

The Court: You may do so.

Q. Was that exhibit gone over by you and Mr. Williams? A. It was.

(Testimony of Arthur Lindgren.)

Q. What did you use it for?

A. We used it for the purpose of determining a mutually agreeable price on each of the items in the final specification. I explained before that this is a rough copy or work sheet covering a consolidation of some 115 items, resulting in possibly 60.

We further boiled this down in the interest of clarification of the whole thing and to further explain certain items in there to make the actual picture clearer, to a total of 48 items in the final specification.

Q. Who determined that the shop orders should be eliminated by number and consolidated?

A. Who determined? May I have that again, please?

Q. I will rephrase it. Did you, on your own initiative, make that consolidation?

A. I did not.

Q. Was it made at someone's request?

A. I made it at the request of Mr. Williams, with [103] my concurrence, because I thought it was a good idea.

Q. And do you know whose handwriting that is on Page 1, where it says O.K.?

A. That is Mr. Williams'.

Q. Are there any further markings on page 1 in Mr. Williams' handwriting, if you know?

A. Only some pencil scratches, or rather, ink scratches, eliminating item No. 2 as so stated.

(Testimony of Arthur Lindgren.)

Q. What about page 2? Are there any marks there by Mr. Williams with reference to price?

A. These pages are not numbered, counsel.

Q. Well, the second one as it appears in order.

A. Item No. 3, Item No. 5, Item No. 6.

Q. With respect to those items, what does the instrument show? A. It shows an O.K.

Q. In whose handwriting?

A. Mr. Williams'.

Q. Would you turn the page and look at the next page? Are there any writings on that page that you recognize to be in the handwriting of Mr. Williams? A. Yes.

Q. With respect to what items?

A. 7, 8, 9, 10, 11.

Q. Are they in ink or pencil? [104]

A. Ink.

Q. Those are Mr. Williams'?

A. That is right.

Q. The next page? A. Items 12, 13, 21.

Q. What with respect to those items did you observe? A. O.K.

Q. You mean—— A. They are O.K.'d.

Q. By whom? A. By Mr. Williams.

Q. And the next page? What does it show with respect to Mr. Williams' writing, if anything?

A. Nothing.

Q. And the following page?

A. Item 44 is stricken. Item 47 states that this is an ABS requirement. Item 52 is stricken, and several others are checked in ink.

(Testimony of Arthur Lindgren.)

Q. Those items that you have mentioned are in Mr. Williams' handwriting?

A. As near as I can determine, yes. They were done in my presence.

Q. Where you have mentioned the writing "O.K.", do you remember if anything was said when that notation was made in each case? [105]

A. You must appreciate——

The Court: No, answer the question.

A. The O.K., in my mind, refers not only to the phraseology of the specifications but the——

The Court: Read the question.

(Last question read by reporter.)

The Court: You must answer yes or no.

A. Yes.

Q. If so, what?

A. I wish that could be rephrased, your Honor.

Q. State, if you can, what was said when the notations that you referred to were made?

A. It was stated by Mr. Williams that he was satisfied with the language of the specification and with the price agreed to. Further, he recommended that I insert certain items for clarification as noted in the pencil handwriting on various items throughout, this to better explain the job performed. This was done with his collaboration and mine.

Mr. Hokanson: I offer the exhibit.

The Court: Were all of the pencil memoranda that appear on that exhibit made in your handwriting?

(Testimony of Arthur Lindgren.)

The Witness: Yes, they were, your Honor.

The Court: You may proceed.

Mr. Hokanson: I have offered the exhibit. [106]

Mr. Howard: I have already made an objection to the exhibit, which has been overruled. I have no further objection other than the one already stated.

The Court: The objection is overruled.

Libelants' Exhibit 7 is now admitted.

(Libelants' Exhibit 7 received in evidence.)

COMMERCIAL SHIP REPAIR
DIVISION

August 6, 1948

Job Order No. 678

Vessel: M.T. "Urania"

Additional Work

1. Furnish services of qualified Diesel engine machinists to work in engine room as directed by Chief Engineer. *Hours 7654*
Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer.
Test six (6) exhaust and intake valves hydrostatically for leaks. Face valves and valve seats, grind in and test for tightness.
Test six (6) air starting valves, grind in and make tight three (3) air starting valves.
Clean up and test eight (8) fuel injection nozzles.
Remove cylinder head studs from five (5) cylinders.
Install new liners in five (5) cylinders.
Disconnect and remove thrust shaft, fly wheel and other interference and lift crank shaft. Reassemble and replace after work on crank shaft is completed by ship's force.
Make up necessary spacers for holding main bearing lower shells in place while fitting bearings.
Make up two (2) special 1" x 16" studs.
Machine main bearing bridge gauge.
Make up cylinder liner pulling gear.
Make up bracket and lever for fuel nozzle test stand.
Make up special equipment for engine throttle controls.
Bore holes in new cylinder brackets to accommodate cam shaft.
Install six (6) cylinders on engine.
Make up gaskets for fuel pump head.
~~Furnish riggers and crane service to remove engine parts, etc. from vessel and replace after overhaul.~~
Make up miscellaneous studs, bolts, and small parts for ship's force. *OK*
Furnish eight (8) mechanics to accompany vessel on sea trial for making adjustments and corrections developing from same.
Fasten engine room spare parts on bulkheads in locations as directed by surveyor.
Furnish labor and material to pull main engine cylinder liners.
Clean and wrap, and store in warehouse.
Furnish labor and material and hang chain fall in warehouse to handle main engine pistons. Remove rings from pistons, clean grooves and have ready for new rings.
Furnish labor and material to disassemble cam shaft. Stone journals, clean up bearing and gears and reassemble.
Make up and install four (4) sets of air compressor valves as per sample furnished. (Total of sixteen (16) valves.)
Furnish services of factory representative to supervise operation of diesel engines.
Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief Engineer and Mr. Williams.
Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed.
Furnish labor and material to repair circulating system of main engine as necessary.

Furnish labor and material to make up four (4) stake wedges for Chief Engineer as per sketch. *6704*

Item 47 of original contract, renew or repair the following valves, piping and fittings found broken or defective during test:

Hot and cold water piping under floor plates and throughout engine room, main deck quarters, galley and ~~officers quarters~~ (checked and broken from freezing).

Renew hot water tank in engine room. ~~Install new tank in engine room.~~
Renew all steam heating lines on main deck to tanks, all piping running through pump room and under engine room floor plates to sea chests.

Renew piping and fittings for steam heating lines to officers and crews quarters.

Repair two radiators on main deck.

Renew faucets and drains on three (3) washbowls.

Renew piping and fittings on sanitary lines throughout ship.

Renew steam reducing valve to heating system.

Repair 2 1/2" steam trap to hotwell.

Install smothering lines to forward hold.

Install piping from after peak tank for suction to fresh water pump.

Repair or renew piping, fittings and valves on fire lines throughout vessel as necessary.

Renew pipe lagging on deck steam lines and patch steam lines in quarters.

Re-route piping from lube oil tank to poop deck.

Remove unused CO₂ piping.

~~Repair heating coils in cargo hold.~~
Furnish services of crane and rigger to handle ships stores on and off vessel, also provide stowage for same as directed by Captain and Chief Engineer.

~~Furnish services of truck and driver to handle material.~~

5. Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer.
- Hydrostatically test cylinder heads and cylinder blocks on three (3) auxiliary engines, also exhaust manifolds.
- Test and overhaul fuel nozzles for three (3) engines.
- Test and recondition two (2) fuel pump and governor assemblies.
- Reseat valves in cylinder heads and grind in valves on two (2) engines.
- Overhaul two (2) saltwater circulating pumps.
- Hydrostatically test cylinder heads and blocks on two (2) air compressors.
- Open out water end of bilge pump and close up after inspection.
- Install new diaphragm on boiler feed pump.
- Test crank shaft for defects on starboard auxiliary.
- Make up two sounding rods for tanks.
- Pull timing gear off cracked crank shaft and install on new crank shaft on starboard auxiliary.
- Make up fitting for governor control rods.
- Make up copper gaskets for engines.
- Furnish equipment to pull cylinder liners and reinstall.
- Remove broken studs from cylinder block auxiliary engine and air compressor and engine filters.
- Make up flanges for filters.
- ~~Rigger and crane service for removing machinery to shop and to ship.~~

Furnish thirty-two (32) photostats of vessel as original.

7. Take up and install plywood ring box at after end of pilot house deckhead.

8. Disconnect, remove to shop and shop overhaul the following motors:

- 1 - Fresh water pump (Circ. 5-FB-127)
- 2 - Air Comp. #2 (Circ. FB-122)
- 3 - Fire Pump (Circ. FB-123)
- 4 - Bilge Pump #2 (Circ. FB-130)
- 5 - Lub. Oil Pump (Circ. FB-125)

Auxiliary Generator #1

Disassemble, wash out, bake dry, recheck, clean up as necessary, reinsulate (varnish), replace faulty or missing parts as necessary and reassemble.

Auxiliary Generator #2 (Armature)

Pull armature, completely reinsulate all windings, remove all armature coils and renew all commutator insulation, new mica V-rings and segment units.

(Note: All insulation on windings and commutator saturated with salt water.)

Motors on Clayton boilers water soaked. Disconnect, remove to shop, overhaul. Reinstall. Much of wiring to above motors low on insulation. Dry out and or replace as necessary.

Repair all indents on shell as directed and after completion of repairs hose test. ABS requirement.

After Peak Tank: Repair up three (3) deep floors and install suitable stiffening angle on each side of stern tube. ABS requirement.

Chip out and weld crack on main deck as marked. ABS requirement. Renew section of damaged plating on wings of flying bridge. Flush off and weld up deck in way of vent pipes on forecabin head.

Furnish labor and material to repair ship's lighting system as follows:

Remove grounds from lighting circuit port side and below switchboard in engine room.

Replace missing covers throughout ship.

Repair open wiring where radio speakers have been removed.

Reconnect wiring in locations as necessary.

Furnish labor and material to perform the following:

Make two (2) new 3/4" galv. quarter shrouds for foremast.

Replace three (3) 1-1/4" turnbuckles.

Overhaul on cargo hose boom:

- 1 - 3" sheave block
- 1 - 2" sheave block
- 5 - single sheave blocks

Replace on cargo hose boom:

- 1/2" Wire on Topping Lift
- 1/2" Wire of Paravane Fall
- 5 - 1-1/2" Galv. Anchor Shackles

Make two (2) new shrouds on mainmast.

OK

OK

2205

7

OK

985

OK

665

OK

219.2

Additional work

12. Furnish and install flushing pump ~~over~~. *Complete with water switch and connections etc.* OK 547
- F.O. Pump - Pump water soaked. Disconnect, remove to shop, overhaul, replace faulty parts. Reinstall.
13. Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil.
Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose, by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain. OK 780
14. Furnish necessary labor and material to remove small standby boiler from engine room. ~~Out 35~~
5. Furnish labor and material to make wooden plugs and ~~staves~~ for each ventilator. 35
6. Furnish necessary labor and material to extend and relocate whistle at after end of chartroom. *Amend, whistle & prove*
~~Furnish labor and material to install whistle bells to pilot house, complete with extensions to wings of bridge, handles etc.~~ 158!
- ~~Heating Boilers~~
Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing, furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler to 225 lbs. and prove tight to satisfaction of owners representative. *Install pattern gauge glasses, overhaul safety valves etc. all to satisfaction of American Bureau.* 5875
1. Furnish labor and material to make up forty name plates in Greek. 129
- ~~Furnish labor and material to steam clean diesel oil day tank and install same.~~ ~~Out 20~~
- Furnish labor and material to extend transverse bulkhead forward end of after house 36" to port on main deck, relocate fire station to suit. 498
- Furnish labor and material and install watertight door and weather coaming at after end of booby hatch on poop deck. Remove existing hatch coaming and cover, grind flush and finish old surfaces and corners smooth. *Add item 59* OK 475
- Furnish labor and material other than ship furnished to install radio telephone complete. *But under add item 41* - 960
- Manufacture and install one (1) additional vegetable locker. 125
- Relocate kedge anchor on after main deck and make suitable checks for same. 30
- Life Boats: Furnish labor and material to perform the following:
Provide missing floor board.
Provide and install ridge spreaders.
Provide and install air tank to suit bow and stern in the two (2) life boats.
Provide provision tanks in two (2) boats.
Make one (1) rudder as per sample.
Provide three (3) 10' oars.

(Testimony of Arthur Lindgren.)

The Court: Compare Exhibit 4 with Libelants' Exhibit 7, and after doing so, state if there is any relation between the two exhibits.

The Witness: May I have a moment, your Honor?

The Court: Yes, you may.

The Witness: There is definitely a relationship, because it appears that Exhibit 4 is practically a verbatim copy of Exhibit 7, with the corrections made noted on Exhibit 7, boiling the specifications down from a total of 60 items to a final total of 40, so there is definitely a relationship between the two.

The Court: I ask counsel for libelants why two exhibits relating to similar subject matter were used?

Mr. Hokanson: Your Honor, there is being called into question here the background of Exhibit 4. It is our contention, as evidenced by the signature thereon, that that represents the agreed price reached [107] at the time between Mr. Williams as the owners' representative and Commercial Ship Repair, represented at this time by Mr. Lindgren. In support of what Mr. Lindgren testified to, I offered No. 7 for the reason that it demonstrates that there was a discussion and a negotiation over these prices.

The Court: How does it do that? How does one exhibit differ from the other?

Mr. Hokanson: I believe that the numbering is not exactly the same in sequence, and there are

(Testimony of Arthur Lindgren.)

interlineations on No. 7 which do not appear on No. 4. I believe there is a further consolidation in respect to the total number of items on No. 4, moreover, than on No. 7. I think it vouches for the testimony of Mr. Lindgren.

The Court: I ask the witness what is the difference, if any, between the two exhibits? What information does one reflect different from the other?

The Witness: So far as the information reflected is concerned, they would be the same. As I say, there is a difference in the number of items; 1 through 48 on one and 1 through 60 on the other, some items being eliminated on 7, some of these being consolidated with other items in No. 7 to result in the 48 items. [108]

The Court: Do you think the marginal notations mentioned by you with respect to Exhibit 7 occur in respect to Exhibit 4, the marginal notations which you have said have been in certain persons' handwriting? Do those marginal notations appear identical in the two exhibits?

The Witness: They do not.

The Court: One has them and one does not?

The Witness: Exhibit No. 7. There are no notations on Exhibit No. 4.

Mr. Hokanson: You may examine.

Recross-Examination

By Mr. Howard:

Q. Were all of the pencil notations appearing

(Testimony of Arthur Lindgren.)

on Exhibit 7 present at the time you discussed this document with Mr. Williams? A. They were.

Q. Have any changes been made in that document since that time?

A. No, sir, not to my knowledge.

Q. Will you look at it once again and see if there are any that you now become aware of?

A. There are items scratched out, etc., but I wouldn't be able to determine whether that was done last [109] night or three months ago, perhaps. To my knowledge, sir, there has been no change in it since the time it was first handed to Mr. Williams for his approval or otherwise.

Q. The figures in the righthand column in pencil are in your handwriting? A. Yes, sir.

Q. There are a lot of items in Libelants' Exhibit 7 that are not O.K.'d, isn't that true?

A. Without a detailed analysis, I wouldn't like to answer that question.

Q. Referring to the 4th, 5th and 6th pages, is it not true that those items are not approved or are not marked O.K. with the exception of 3 O.K.'s on the 4th page?

A. I may explain that this copy is what might—

Q. Can you answer the question, please?

A. Will you rephrase it?

Q. Referring to page 4 of the exhibit, is it not true that there are only 3 items containing an O.K. symbol on that page? A. That is true.

Q. Referring to page 5 of the same exhibit, are any of those items marked with an O.K. symbol?

(Testimony of Arthur Lindgren.)

A. No.

Q. Page 6, are there any items on that page indicated with an O.K. symbol? [110]

A. No.

Mr. Howard: I have no further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Williams.

The Court: Do you wish to call him as a libelants' witness?

Mr. Hokanson: Your Honor, this witness is under subpoena and I am not prepared to say now whether he is an adverse witness or not.

The Court: Now is the time to say it if you are ever going to say it.

Mr. Hokanson: I will declare him as an adverse witness.

The Court: Do you call him as such at this time?

Mr. Hokanson: Yes, your Honor.

HARRY F. WILLIAMS

called as an adverse witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows: [111]

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

(Testimony of Harry F. Williams.)

A. Harry F. Williams.

Q. And your address?

A. 2553 Bedford Avenue, Brooklyn, New York.

Q. What is your occupation?

A. Surveyor and engineer.

Q. What is your experience as a surveyor?

A. I have been in business 14 years myself, and altogether, I have been in the marine business over 40 years, more than 40 years.

Q. Were you employed by the Compania Naviera Limitada on or about August 1948? A. I was.

Q. To represent that corporation respecting the repairs, alterations and renewals of the Motor Tanker Urania? A. I was.

Q. Did you attend the Urania during her repairs and alterations while she was at Winslow?

A. Continuously.

Q. When did you leave Seattle?

A. I think it was October. It was a Friday night before Columbus Day; I don't know the date off-hand, October 9.

Q. When did you arrive at Seattle? [112]

Mr. Howard: If he knows.

A. The same day the bid was given out, opened.

Q. Then you remember having attended a meeting in Mr. Black's office on or about August 4, 1948? A. That's right.

Q. Did you supervise the job that was done for the owners on the Urania at Winslow?

A. I did.

(Testimony of Harry F. Williams.)

Q. Showing you Libelants' Exhibit 4, what does that represent, if you know?

A. That is a consolidation of a good many work orders put all into one grouping, because it mostly pertains to the engine.

Q. I am referring to the entire document now, and not just that. A. The entire document?

Q. Yes.

A. The entire document pertains to the extra work outside of the contract.

Q. Calling your attention under item No. 1, which appears on the first page, to the item denominated "furnished services of factory representative to supervise operation of Diesel engines," which appears about the seventh or eighth line from the bottom, do you note that?

A. I see the item, yes. [113]

Q. Was that item accomplished?

A. No, because the representative I wanted was at sea at the time.

Q. You made a request to get him, did you?

A. I called him up personally, and his wife told me he was at sea.

Mr. Howard: I object to that as hearsay.

The Court: The objection is sustained. Do not mention that in the absence of the person mentioned.

Q. If you know, why was that item left on the work order?

A. It may have been an oversight. It was an

(Testimony of Harry F. Williams.)

oversight on my part as well as the Commercial Ship Repair Company.

Q. Do you know whether they charged you for that item?

A. That I couldn't say unless I saw their work sheets.

Q. The responsibility of furnishing that factory representative was not that of the shipyard, was it?

Mr. Howard: If the Court please, this man has been claimed as an adverse witness, but it seems to me there is a limit to which counsel can lead the witness in his answers.

The Court: The objection is overruled.

A. It was a convenience on our part to have him.

Mr. Howard: I move to strike the answer as not [114] responsive.

The Court: Read the answer.

(Last answer read by reporter.)

The Court: The objection is overruled and the motion is denied.

Q. Considering further the exhibit that you hold, namely, Exhibit 4, will you state whether the rest of the work listed thereon was accomplished?

A. You mean the entire exhibit?

Q. Yes.

A. There was a couple of items that were not accomplished and one not in its entirety, but the rest of it was.

Q. Would be specifically point out what items were not accomplished?

(Testimony of Harry F. Williams.)

A. Well, the Diesel engine expert wasn't hired, for one, and item 46 was not finished because we cancelled part of it, and the clipboard, 47, was not removed. I would have to read it more carefully.

Q. You say item 47 was not accomplished?

A. No.

Q. No part of it accomplished?

A. No, we cancelled it because it was not necessary. 46 we cancelled. We didn't build this tool locker. There was part of this job done, which a credit should be given. [115] There should be a reduction on that one item there.

Q. On which item? A. On 46.

Q. There should be a reduction?

A. Yes, in the price.

Q. To what amount?

A. I think \$200 should be taken off that item, because we did not build the storeroom.

Q. With the exception of the items you have noted, was the work accomplished?

A. It was all accomplished.

Q. Was it done to your satisfaction?

A. It was.

Q. Referring to item 1 of Exhibit 4, the first sentence says, "furnish services of qualified Diesel engine machinist to work in engine room as directed by chief engineer." Was any of the work on the main engine done independently by the shipyard?

A. Outside of rigging, no. It was under supervision of the chief engineer.

(Testimony of Harry F. Williams.)

Q. All work on the main engine was under the supervision of the chief engineer?

A. Right.

Mr. Hokanson: May it please the Court, it may help to shorten somewhat the testimony here. Mr. Howard [116] and I have reached a stipulation with respect to the main contract, which I believe is identified as Exhibit 1. My understanding is that it may be stipulated that the main contract, Exhibit 1, represents an agreed price contract for \$41,655 and that all of the work listed therein was accomplished save one item, which is No. 36, and which libelants reserve the right to present testimony on, and the stipulation would be without prejudice to the right of claimant and cross libelant to challenge the competency or the workmanlike qualities of the services and material furnished.

The Court: State concisely whether or not you agree with that statement.

Mr. Howard: That is my agreement, if it is clearly understood that the stipulation goes only to the items of the main contract in the amount of \$41,655, reserving to us the right to dispute item 36 of the main contract, and that this stipulation does not refer to the extra work.

Mr. Hokanson: I think it is clear that the stipulation includes the agreement that all work was accomplished save that one item.

Mr. Howard: That is right.

(Testimony of Harry F. Williams.)

The Court: The extras are covered by what [117] exhibit, if any?

Mr. Hokanson: No. 4, Your Honor, and Exhibit 6, I believe.

The Court: The exhibit related to No. 4 is No. 7?

Mr. Hokanson: That is right.

The Court: Was there something else you had in mind other than those two? There are invoices 1-10 for the spare parts for the auxiliary machinery.

Mr. Hokanson: Exhibit No. 6. We have not reached a stipulation with respect to that.

The Court: So then this does not refer to the extras in Exhibit 6 and 7?

Mr. Howard: 4, 5 and 7 is my understanding.

The Court: In Exhibit 4?

Mr. Howard: And 5.

The Court: Do you agree, Exhibit 5?

Mr. Hokanson: Your Honor, I believe No. 5 contains both the contract price and the additional work. It is in one exhibit, and therefore with respect to the first part of it, which is the same as Exhibit 1, our agreement would stand. As to the second part, which covers the additional work which is also covered by Exhibit 6, the stipulation does not stand.

The Court: May I suggest some words and see if you gentlemen approve? This stipulation does not [118] refer to the extras mentioned in Exhibits 4, 5, 6 and 7.

(Testimony of Harry F. Williams.)

Mr. Howard: That is agreeable to claimant, Your Honor.

Mr. Hokanson: That is right.

The Court: Then that will take care of it.

Q. Calling your attention to item No. 36 on Exhibit 1, was that item accomplished?

A. It was not.

Q. Why not?

A. Because the American Bureau inspector and I decided it would be better off to be left in there.

Q. Was any discussion had between you and Mr. Featherstone with respect to that item?

A. Yes, Mr. Featherstone agreed to do another job for me in exchange for it.

Q. Did he do it? A. He did.

Q. Was the job that he did of equal value to the amount assigned to No. 36? A. I think so.

Q. What was that other job?

A. He sprayed my whole deck for me and all the catwalk and all the discharge lines with the ship's paint, but he furnished the labor. [119]

Q. Was all of the rest of the work listed in Exhibit 1 accomplished to your satisfaction?

A. It certainly was.

Q. With the exception of those items on Exhibits 1 and 4 which you have already testified were not accomplished, was all of the rest of the work done in a timely manner?

A. It was done in a good manner.

Q. Was it done timely?

(Testimony of Harry F. Williams.)

A. Done in good shipyard fashion. It was done all right.

Q. Was any objection ever made with respect to the time which it took to accomplish the work by you?

A. No, I made no objection to time.

Q. If you know, was there any urgency about the completion of this job?

A. Not that I know of.

Q. Did Mr. Antippas ever request that the job be hurried along?

A. The last week or so, he was uneasy. He wanted to know when it would get out.

Q. By the last week, you have reference to the last week you were in Winslow?

A. That is right.

Q. Calling your attention to Exhibit 5, I will ask you whether your signature appears thereon? [120]

A. It is my signature.

Q. And referring to Exhibit 6?

A. That is also my signature.

Q. You had occasion during your supervision of this work to observe the crew of the *Urania*, is that correct?

A. You mean the sailing crew, the ship's crew?

Q. The ship's crew. A. Yes.

Q. In your experience as a marine surveyor and a seagoing man, do you have any opinion based upon your observation of those men as to their competency?

(Testimony of Harry F. Williams.)

Mr. Howard: Just a minute. Before he answers the question as to competency of the seagoing crew, I want to enter an objection that he has not established a qualification for rendering an opinion on that. He has been a marine surveyor for a number of years, but I submit to the Court that that in and of itself is not sufficient to establish his qualifications.

The Court: The objection is sustained. We will be adjourned until tomorrow morning at 9:30.

(At 4:48 o'clock p.m., Thursday, April 7, 1949, proceedings adjourned until April 8, 1949, at 9:30 o'clock a.m.) [121]

April 8, 1949, 9:30 o'clock a.m.

The Court: When counsel are ready, you may proceed with the case on trial.

HARRY F. WILLIAMS

Direct Examination—(Continued)

By Mr. Hokanson:

Q. Mr. Williams, what licenses do you hold in connection with your work as a surveyor?

A. I have an unlimited license, any ocean, any tonnage.

Q. What type of license?

A. Unlimited license, marine.

Q. How long have you held it?

A. Since 1911.

Q. Have you been to sea?

(Testimony of Harry F. Williams.)

A. Yes, many years.

Q. How many years have you been acting as a surveyor?

A. I have been a private surveyor for the past fourteen years. [122]

Q. Prior to that time?

A. I was employed with different engine companies as field engineer, worked for the Bethlehem Steel Corporation at Quincy, as trial engineer, Standard Ship Corporation, Soldiers Island, New York. I have worked in various shipyards throughout the country.

Q. During your supervision of this work at Winslow on the *Urania*, you were in close contact with the men who were doing the work?

A. Absolutely, associated with them daily.

Q. And you had occasion to observe their competency in performing that work, did you not?

A. I did.

Q. What is your opinion as to the competency of the supervisors and the personnel of Commercial Ship Repair who worked on the *Urania*?

A. They proved all right, as any other shipyard. They were competent and they knew their job. They didn't have the best of men, but they made the best of everything, seeing that the job was carried out properly.

Q. What about the material that was furnished to the vessel?

A. The material was okay, because it had to pass

(Testimony of Harry F. Williams.)

the American Bureau, the standard practices of shipbuilding and ship alterations. [123]

Q. It also met with your approval, did it?

A. It had to.

The Court: I believe he asked you what the fact was. Did it or did it not?

A. It met with my approval, yes.

Q. Handing you Libelants' Exhibit 6, that covers the certain items of spare parts, and I assume that those parts were furnished to the vessel?

A. They were.

Mr. Hokanson: At this time, Mr. Howard, do you have in your possession a report furnished by Mr. Williams to the owners of the *Urania*?

Mr. Howard: Yes, I have.

Mr. Hokanson: May I have it, please? I ask that this be marked for identification.

(10-27-48 report marked Libelants' Exhibit 8 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 8, can you state what that is?

A. That is a surveyor's report made out by my firm, delivered to *Compania Naviera Limitada*, Panama, which is a customary report after the completion of any job done.

Q. Does it bear a signature at the end?

A. It bears a signature, yes, sir.

Q. Whose signature is it, if you know? [124]

A. It is my signature.

(Testimony of Harry F. Williams.)

Mr. Hokanson: I offer the exhibit in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 8 received in evidence.)

LIBELANTS' EXHIBIT NO. 8

Report

Burke & Williams

Engineers-Surveyors-Appraisers

October 27th, 1948.

Compania Naviera Limitada, Panama

Simpson, Spence & Young

52 Broadway, New York, N.Y.

M. T. "Urania"

Gentlemen:

At your request I attended the M. T. "Urania" while the vessel was lying at Foss Dock, Seattle, Washington and while lying at the Commercial Ship Repair Company's yard, Winslow Division, Blakely Island, Washington on August 3rd 1948 and subsequent dates for the purpose of classifying and conversion of the ex U.S. Navy Tanker YO 73.

Length Overall	216'	6"
Length Water Line	210'	6"
Beam	32'	10 $\frac{1}{4}$ "
Maximum Draft (about)	12'	8 $\frac{5}{8}$ "
Cargo Capacity (about)	9960	Bbbs.

The following specification was sent out for bid and the Commercial Ship Repair being the lowest bidder was awarded the contract.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Drydocking

Drydock vessel for cleaning, painting and specified repairs. On completion of work, undock vessel.

Underwater Painting

Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line, port and stbd., with one coat of AC paint. Paint hull from keel to light load line port and starboard, with one coat of AF paint. Paint hull from light load line to deep load line, port and stbd., with one coat of boottopping paint. Owner to furnish paint.

Hull Marking

Paint in draft marks at bow and stern. Paint name of vessel on bow, port and starboard.

Paint name and hailing port of vessel at stern.

Paint in Plimsoll marks, port and starboard sides.

Name Board

Manufacture and install suitable name boards on bridge, port and starboard.

Sea Valves and Strainers

Remove strainers from sea chest for examination.

Clean and paint sea chests and strainers and replace strainers in good order.

Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Tailshaft

Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order. Depack stern gland with new packing.

Rudder

Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.

Zinc Plates

Quote pound price for replacement of zinc plates found to be missing or deteriorated. Zincs to be secured by stainless steel studs and nuts made up in good order.

Propeller

Clean propeller by wire brushing.

Fair up and dress off minor indents in tips of blades.

Separate work order to be issued to cover any major work found to be necessary.

Cargo Tanks and Piping System

Remove and dispose of approximately 3000 bbls. of ballast and sludge presently in eight (8) cargo tanks.

Clean tanks and piping system and certify "gas free" for hot work and internal examination.

Test tank heating coils and report condition found.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Open out all cargo valves, both on deck and in tanks, for examination.

Overhaul valves, grind in, repack and rejoin and make up in good order.

Free up all control reach rods of internal tank valves and repack at deck glands.

Open vapor-vacuum valves for examination. Free up as required and close up in good order.

On completion of tank cleaning and internal examination test tanks hydro-statically to requirements of ABS. On completion of testing remove testing water as directed.

Cargo Pumps

Open cargo pumps and motors and clean up for ABS examination. On completion of examination close up in good order.

Cargo Tank Ullage Covers

Free up and lubricate all dogs and hinges on cargo tank ullage covers. Renew gaskets on cargo tank ullage covers. Prove in good order.

Fuel Oil Tanks

Remove diesel oil from fuel tank located in way of engine room and clean tank. Certify tank "gas free" for internal examination and hot work. On completion of internal examination test tank hydro-statically to requirements of ABS.

On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable stor-

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

age for diesel oil while tank is being cleaned and tested.

Forepeak and Aft Peak Tanks

Drain and clean out forepeak and aft peak tanks for internal examination. It is assumed that these tanks are ballast tanks and are not contaminated. On completion of internal cleaning and examination tanks to be coated with one coat cement wash.

On completion of above work tanks to be hydrostatically tested to requirements of ABS.

On completion of testing remove testing water and leave tanks dry.

Fresh Water Tanks

Drain and clean out fresh water tanks located port and stbd. in way of engine space. Open tanks for internal examination.

On completion of examination tanks to be coated with one coat cement wash.

Tanks to be hydrostatically tested to requirements of ABS.

On completion of test leave tanks full of fresh water.

Ballast Tank Conversion

Forward Deep Tank presently fitted as a ballast tank to be converted to use as diesel fuel tank as follows:

Open tank and clean for internal examination.

Connections between tank and forward bilge and

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

ballast pump, are to be removed and suitably blanked off.

Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications.

Pump to be suitably located in storeroom over tank space.

Furnish and install fuel oil piping in general accordance with contract plan S37-7.

On completion of work close up tank in good order and test tank and new piping to requirements of ABS.

On completion of test remove all test water from tank and leave ready to receive fuel oil.

Gun Tubs and Ammo Lockers

Remove all ammunition lockers and ready service boxes from decks. Remove splint apron and gun pad from poop deck, plug anchor bolt holes watertight.

Remove superfluous sections of forward gun tub leaving section in way of catwalk.

Install suitable handrails and curtain plates in way of catwalk forward where sections of gun tub removed.

Chip off all rough edges and grind smooth.

Ladders and Handrails

Fair and refit all deck ladders and handrails where damaged and install new handrails where missing.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Refit and rig bulwark stanchions at port and stbd. sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owners.

Port Lifeboat

Fair out indents in hull of Port lifeboat and restore to original good order.

Watertight Doors and Scuttles

Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and after house. Thoroughly lubricate and prove in good order.

Mushroom Ventilators

Free up, lubricate and prove in good order all mushroom ventilators on weather decks.

Ventilation Systems

Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.

Electrical System

Megger test all electrical circuits, motors and generators throughout vessel to requirements of ABS and report conditions found.

Reassemble and properly close up all open junction boxes, switch boxes and outlets.

Renew fuses on all switchboards where standard fuses fitted.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Report all deficiencies found in electrical system.

Check markings on all electrical switch boxes and relabel correctly as found necessary.

Separate order will be issued for all equipment renewals found to be necessary to restore to good order and operating conditions.

Fire Fighting Equipment

Check, test and/or weigh all fire extinguishers and CO² bottles and report condition found.

Ships crew will recharge all liquid extinguishers.

Separate order will be issued for recharging CO² bottles as necessary.

Engine Controls and Telegraph

Test out Pilot House controls to main engine and engine order telegraph and report condition found.

Free up and lubricate mechanical equipment found in good order.

Steering Engine and Controls

Test out steering engine and steering gear and report condition found.

Free up and lubricate mechanical equipment found in good order.

Remove locking device from rudder before testing.

Gauges and Indicators

Check out all gauges and indicators throughout vessel and report condition found.

Gauges and indicators where dismounted to be re-installed and connect in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Flag Pole

Damaged flagpole at poop to be faired and refitted as originally installed.

Check and repair electric connections and fittings to restore to good order.

Whistles

Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.

Mooring Winch

Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 HP.

Controls to be located in convenient location as directed and to be weather-proof.

Wheelhouse Doors

Furnish and install two (2) new metal doors at wheelhouse, port and starboard sides.

Frame to be fitted to accomodate new doors.

Doors to be fitted with all new hardware including holdback and ajar hooks.

Navigation and Flood Lights

Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Mast Rigging

Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.

Screendoors

Renew damaged or missing screening in screen doors throughout vessel.

Renewals to be bronze or copper screening.

Sprinkling System

Sprinkling system to forward ammunition locker to be removed in its entirety.

Ammo. Storeroom Bulkhead

Remove designated section of bulkhead at forward ammunition storeroom.

Plumbing and Heating Systems

Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order.

Vessel to supply any missing or damaged fixtures.

Connect all piping, close all drains, test out and free up flushometers.

Crews Quarters—Port Side, Main Deck

Furnish and install crews quarters to accomodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Crew Quarters—Starboard Side, Main Deck

Furnish and install crews quarters to accomodate two (2) men in one (1) room on starboard side, main deck aft together with sanitary facilities adjacent thereto as per arrangement Plan #837-1 and in accordance with details specified in conversion specifications.

Messroom

Furnish and install joiner bulkheads in way of officers messroom to suitable divided space and segregate from adjacent crew messroom as directed.

Officers Quarters—Boat Deck

Furnish and install new section of deck house at port and starboard sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications.

Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accomodate refrigerator space arrangement.

Captains Stateroom

Captain's Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.

Refrigeration Space and Equipment

Furnish and install Refrigeration Boxes and equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled to restore to good order and reinstalled with all fittings and controls in ship's Galley as directed.

Space as detailed in Arrangement Plan to be enlarged by extending starboard bulkhead approximately three (3) feet to starboard side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed.

Center section will not be insulated but will be used for access to Meat Box on Port Side and to Vegetable Room on starboard side.

Controls for individual boxes to be located in center section adjacent to boxes served and compressor to be located conveniently in Engine Space.

Galley

Remove domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator space.

Clean up service tables by wire-brushing to bare metal. Check out Galley electric range and report condition found.

Repair cowling over galley range to restore to original good order.

Overhaul galley range exhaust blower as necessary to restore to original good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Clayton Boilers—(2)

Clean out two (2) Clayton Boilers located in Engine Space. Thoroughly check out, examine and test all parts and controls and report condition found.

Anchor Windlass

Check out anchor windlass, drive motor and controls and report condition found.

Assemble parts in good order and test windlass to ABS requirements.

Thoroughly lubricate.

Steam and Water Lines

Connect up and test out existing fresh water, steam, sanitary and fire lines throughout vessel and report condition found. Renewals found to be necessary to be covered by separate work order.

Panama Bitts

Furnish and install two (2) ten-inch (10") Panama Bitts. Bitts to be located on fore'sle head, port and starboard, as directed.

Skylight Operating Gear

Free up and lubricate operating gear of engine room skylight and prove in good order.

Chart Room

Furnish and install Chart Room to be located aft of Captain's Quarters on Boat Deck approximately 8 feet x 8 feet x 7 feet. (Revised item to be issued giving details.)

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Chain Pipe Covers

Furnish and install chain pipe covers as required. Free up and refit existing dogs and covers on chain pipes and hawse pipes, port and starboard.

Pipe Lagging

Check out entire vessel for defective pipe lagging and report condition found.

All defective lagging to be renewed or repaired to restore to good order.

Dry Storeroom Shelving

Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.

Vegetable Locker

Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal screen.

Door Locks

Renew or repair defective joiner door locks throughout vessel. Furnish keys with new locks.

Pelorus Stands

Remove two (2) Pelorus stands located at port and starboard sides of bridge.

Flush off cuts and grind smooth.

Remove degaussing wires and conduit from deck, chip off all supporting brackets, grind deck smooth and prime paint. Blank off openings in bulkheads fore and aft and prove watertight.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish and install starting motor for auxiliary generator.

Remove spare piston and relocate. Build in storeroom in starboard forward corner of engine room over cargo pump motor. Storeroom deck to be constructed of diamond floor plate and angle frame supported from deckhead. Sides to be expanded metal with door, hasp, padlock and access ladder to same. Install shelves as directed.

Remove two clipboards at after end of engine room starboard side and build in two metal tool lockers with shelves, doors, hasps and locks.

Remove and replace engine room skylight for removal of engine parts.

Remove canvas and frame from after hatch, make up and install steel booby hatch.

Furnish services of two (2) qualified Diesel engine machinists to work in Engine Room as directed by Chief Engineer.

Furnish labor and material to make up four (4) stake wedges as per sketch.

Renew broken fitting and pipe found when testing.

Furnish services of crane and rigger to handle material on and off vessel, also provide stowage for same as directed by Captain and Chief Engineer.

Furnish services of truck and driver to handle material.

Purchase material and spare parts requested by Chief Engineer and as approved by Mr. Williams,

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Owner's Surveyor.

Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer.

Note: Foreman to keep complete work list of work performed under this item and turn same into Accounting Department.

Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer.

Note: Foreman to keep complete work list of work performed under this item and turn same into Accounting Department.

Furnish thirty-two (32) blue prints.

Make up and install plywood flag box at after end of pilot house deckhead.

Fasten engine room spare parts on bulkheads in locations as directed by surveyor.

Disconnect, remove to shop and shop overhaul the following motors:

Fresh water pump	(Circ. 5-FB-127)
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Air Comp. # 2	(Circ. FB-122)
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Fire Pump	(Circ. FB-123)
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Bilge Pump # 2	(Circ. FB-130)
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Lub. Oil Pump	(Circ. FB-125)
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Aux. Gen. # 1

Aux. Gen. # 2

Shop overhaul to include:

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Disassemble, wash out, bake dry, recheck, clean up as necessary, reinsulate (varnish), replace faulty or missing parts as necessary and reassemble.

Fair all indents on shell as directed and after completion of repairs hose test.

After Peak Tank

Fair up three (3) deep floors and install suitable stiffening angle on each side of stern tube.

Install sounding pipe to main deck.

Main Engine Cylinders

Furnish labor and material to pull cylinder liners. Clean and rap, and store in warehouse.

Main Engine Pistons

Furnish labor and material and hang chain fall in warehouse so to handle pistons. Remove rings from pistons, clean grooves and have ready for new rings.

Main Generator

Purchase one (1) only crank shaft as directed.

Purchase crank bearing shells.

Purchase main bearing shells.

Furnish services of truck and driver to dispose of garbage.

Lighting

Furnish labor and material to repair ship's lighting system as follows:

Remove ground from lighting circuit port side and below switchboard in engine room.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Replace missing covers throughout ship.

Repair open wiring where radio speakers have been removed.

Reconnect wiring in locations as necessary.

Galley Range

Furnish labor and material to put galley range in good working order.

Mast Rigging

Furnish labor and material to perform the following:

Make two (2) new $\frac{3}{4}$ " galv. quarter shrouds for foremast.

Replace three (3) $1\frac{1}{4}$ " Turnbuckles.

Overhaul on cargo hose boom:

$\frac{1}{3}$ " Sheave block

$\frac{1}{2}$ " Sheave block

5 Single Sheave Blocks

Replace on cargo hose boom:

$\frac{1}{2}$ " wire on Topping Lift

$\frac{1}{2}$ " wire of Purchase Fall

5- $1\frac{1}{8}$ " Galv. Anchor Shackles

Make two (2) new shrouds on mainmast.

Furnish and install flushing pump and motor.

F. O. pump—Pump water soaked. Disconnect, remove to shop, overhaul, replace faulty parts. Reinstall.

Motors on Clayton boilers water soaked. Disconnect, remove to shop, overhaul. Reinstall.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Much of wiring to above motors and motors covered low on insulation.

Dry out and or replace as necessary.

Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil.

Furnish necessary labor to handle and take inventory of all spare parts on ship.

Furnish necessary labor and material to remove small standby boiler from engine room.

Furnish labor and material to make wooden plugs and canvas boots for each ventilator.

Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain.

Chip out and weld crack on main deck as marked.

Remove existing nigger heads and manufacture and install larger ones as per instructions by Mr. Williams.

Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing, furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler 225 lbs. and prove tight to satisfaction of Owners Representative.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish labor and material to make up name plates in Greek.

Day Tank

Furnish labor and material to steam clean diesel oil day tank and install same.

Galley Equipment

Remove and rearrange present dish lockers and shelves in galley and instal portlights in outboard and forward bulkheads.

Furnish labor and material to extend transverse bulkhead forward end of after house 36" to port on main deck, relocate fire station to suit.

Furnish labor and material and install watertight door and weather coaming at after end of booby hatch on poop deck. Remove existing hatch coaming and cover, grind flush and finish old surfaces and corners smooth.

Furnish labor and material other than ship furnished to install radio telephone complete.

Manufacture and install one (1) additional vegetable locker.

Relocate kedge anchor on after main deck.

Life Boats

Furnish labor and material to perform the following:

Provide missing floor board.

Provide and install reach pole.

Provide and install air tank to suit bow and stern in the two (2) life boats.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Provide provision tanks in two (2) boats.

Make one (1) rudder as per sample.

Provide three (3) 10' oars.

Furnish and install six (6) C.P.O. bunks.

2 in Hospital.

2 in Jr. Engineers room.

2 in Jr. Deck Officers Room.

Relocate navigation lights from top of pilot house to wings of bridge, make hinged covers, install chocker plate helmsmans stand etc.

Remove steam heating, piping and radiator in storage hold forward. Run two 1" steam smothering lines from cargo heating system to forward diesel oil tank, forward pump room and paint locker. Mark valves for same.

Furnish labor and material to repair Captain's safe as necessary.

All vents on poop and forecastle to be 18" high. Relocate padeye for foremast.

Provide plugs with chains attached and screens for all vent pipes.

Reroute piping from lube oil tank to poop deck.

Install guard over steam piping on deck. Provide drain on steam lines.

Install new duct to pump room exhauster. Approx. 1/8" plating.

Remove unused CO² piping.

Extend sill heights to 18".

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Install linen lockers as directed by Mr. Williams.

Identify all steam smothering lines.

Post notice at the master stop valve for smothering system.

Renew section of damaged plating on wings of flying bridge.

Manufacture four (4) air compressors suction and four (4) discharge valves as per sample furnished by chief engineer.

Manufacture and install boarding ladder at location directed by Mr. Williams.

Furnish and install masts and sails for two (2) lifeboats.

Mast dimensions to be taken from present mast stop.

Furnish labor and material and test air bottles hydrostatically according to A.B.S. Specifications.

Furnish labor and material to install wood platform deck around pilot house controls as per instructions of Captain.

Furnish labor and material to install voice tube from Engineers room to engine room.

Remove and replace two mooring chocks from location port and starboard side of poop deck, aft to new location at life boat davits.

Furnish labor and material to overhaul lifeboat chocks and replace hinges.

Furnish labor and material to install additional pipe awning stanchions, spreaders, etc., on bridge.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish labor and material to remove and replace lockers and build shelf for line stowage in steering engine room.

Furnish labor and material to manufacture metal cover to be installed on ladder in engine room space to protect gauge glass.

Furnish necessary labor to install owner-furnished radio direction finder.

Furnish services of factory representative to supervise operation of deisel engines.

Flush off and weld up deck in way of vent pipes on forecastle head.

Furnish labor and material to fabricate hinged doors on freeing ports. Port and Starboard side.

Furnish labor and material to fabricate hose stowage racks along starboard side of cat walk.

Do necessary work to stow eight (8) CO² bottles in rack in pump room and two (2) in engine room.

Purchase eight (8) swivel chairs as per instructions of Mr. Williams for officers' mess room and install.

Purchase and install necessary Foamite fire extinguishers and electric fans for vessel.

Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief Engineer and Mr. Williams.

Furnish necessary labor and material to stow

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

spare boiler coils in location as directed by Mr. Williams.

Furnish labor and material to change voice tubing leading from Pilot house to pump room. New lead to go to Engine room.

Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed.

Furnish labor and material to repair fire hose racks throughout ship.

Furnish one (1) steel boarding gangway 28' long and make suitable stowage for same.

Renew broken toilet in aft crews quarters.

Purchase one butcher's block approximately 18" square (table style—without legs—approx. 3" in thickness).

Purchase two (2) Inclinometers.

Furnish labor and material to put sound power telephone in satisfactory operation.

Furnish labor and material to fabricate one settee in Captain's cabin, complete with cushions seat and back—also fabricate base for bunk in Chief Engineer's room.

Furnish labor and material to paint piping on main deck, piping guards, underside of catwalk and engine room fidley.

Furnish labor and material to repair circulating system of Main Engine as necessary.

Make necessary alterations to fire extinguisher hangers to accommodate Foamite type extinguisher.

All the above aforementioned work was per-

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

formed as directed by the American Bureau of Shipping; tested and approved by the Classification Society and necessary certificates were furnished to the ship.

Time required to do the above work, from August 2nd, 1948, to October 9th, 1948, requiring attendance of American Bureau and Radio Marine Corporation and Cummings Engine Company etc.

Very truly yours,

BURKE AND WILLIAMS,

Surveyor Attending:

/s/ HARRY F. WILLIAMS.

HFW/cs

Admitted April 8, 1949.

Q. Are all the things stated in that report true to the best of your knowledge and belief?

A. They are.

Q. Referring to what you said a moment ago with respect to the quality of the men working in the Winslow yard, in your opinion did the personnel compare with the average personnel of ship-yards of this type? A. It does.

Q. Did you attend the dock trials of this vessel?

A. I did.

Q. Was there more than one dock trial?

A. Yes, there was.

(Testimony of Harry F. Williams.)

Q. How many were there?

A. I think there were three real dock trials.

Q. What is a dock trial?

A. It is run for the purpose of tuning up the engines and taking the kinks out of anything that is not right, and that is the only visible way of finding out, is to operate the machinery. [125]

Q. Do you remember when the last dock trial was conducted on the *Urania*?

A. The very last dock trial conducted on the *Urania* I wasn't there, because I was on my way to New York.

Q. With respect to the last dock trial that you attended, do you remember when that was?

A. A few days before the sea trial.

Q. What was the result of the last dock trial that you attended?

A. We had the machinery running for a couple of hours, then we shut down, made a couple of alterations, started them up again, and we kept doing that until we had it as near perfect as could be, ready for sea trial.

Q. Did you receive a report concerning the dock trial held after your leaving Winslow?

A. I did.

Q. From whom? A. From Mr. Gallagher.

Q. Who was Mr. Gallagher?

A. American Bureau inspector.

Q. Did the vessel take a sea trial before you left Winslow? A. Yes, sir.

(Testimony of Harry F. Williams.)

Q. Were you present on that sea trial?

A. I rode the ship and was all over the ship with [126] Mr. Gallagher and watched the performances and made necessary little alterations that happen on a sea trial, until it was satisfactory to Mr. Gallagher of the American Bureau, and then we returned to the yard.

Q. Was Mr. Featherstone along on that?

A. Mr. Featherstone was along.

Q. Upon the sea trial, did you observe the operation of the telemotor? A. Of the what?

Q. The telemotor system.

A. I knew that the telemotor was there. I didn't observe the operation of it. The vessel steered and obeyed the rudder.

Q. During the course of this sea trial, were you with Mr. Gallagher at all times during the progress of it?

A. The majority of the time I was with him.

Q. Do you remember whether Mr. Gallagher told you to take the chief engineer from the throttle of the main engine and put a machinist from Commercial Ship Repair on the throttle to instruct the chief engineer, under your direction and Mr. Gallagher's direction, as to how to operate the main engine properly from ahead to astern?

A. I don't remember that, no.

Q. At the completion of this sea trial, did you confer with Mr. Gallagher concerning the results

(Testimony of Harry F. Williams.)

of the trial? [127] A. I did.

Q. Were you satisfied with the trial?

A. We were satisfied with the trial after certain recommendations was done that were not right up to standard.

Q. What recommendations were those?

A. The tappets on the main engine had to be adjusted; the wedge pieces that were under the fuel valves had to be adjusted. That was so that the vessel would stop properly on the sea trial. It was kind of slowed over, it didn't function perfect, and that was the object of the second dock trial, which was a minor alteration.

Q. In other words, the only recommendations that were made were with respect to the main engine, is that correct?

A. No, there was other little things, but they didn't amount to anything.

Q. Speaking of the main engine, did the chief engineer of the *Urania* have direct charge of all work that was done in the engine room?

A. He did.

Q. Did he have his own crew working in the engine room while the ship was undergoing repairs at Winslow? A. Every day, yes.

The Court: Who was that?

A. The chief engineer.

Q. Of the *Urania*? [128]

A. Of the *Urania*.

Q. And the work there conducted was his responsibility?

(Testimony of Harry F. Williams.)

A. It was his responsibility, and also for the welfare of the ship, naturally.

Q. What was the function of the Commercial Ship Repair machinists in the engine room?

A. They worked as ordinary machinists.

Q. Under whose direction?

A. Under the direction of the chief engineer.

Q. Do you know whether the coolers or heat exchangers were removed from the main engine room of the *Urania*? A. They were.

Q. Do you know who removed them from the engine room?

A. Any mechanic that was told to do it. It could have been one of Commercial Ship's men or one of our crew. I am not sure which one took them off, but they were taken up to the shop.

Q. To what shop?

A. Up to the boiler shop, to be boiled out, cleaned and tested.

Q. Were they subsequently returned to the ship?

A. Naturally, the engine wouldn't function.

Q. Do you know whether they were cleaned and tested? A. They were cleaned and tested.

Q. What, in your opinion, would be an adequate hydrostatic test for coolers of the type on the *Urania*?

Mr. Howard: If you know.

A. Working pressure would be suitable.

Q. Referring now to the salt water side of the coolers? A. Absolutely.

(Testimony of Harry F. Williams.)

Q. A test of working pressure would be sufficient?

A. That is the rules of the American Bureau, which I don't know right offhand.

Q. Would that be true also as to the test on the lube oil side? A. It would be.

Q. Directing your attention to Libelants' Exhibit 4, on the first page thereof, the last item listed, "furnish labor and material to repair circulating system of main engine as necessary." Do you recall what that item covered?

A. You say it is the last item here?

Q. On the first page, yes.

The Court: May I interrupt you to ask that you first inquire of the witness what relationship, if any, those parts have to the parts that he has been discussing in the last few questions and answers?

Mr. Hokanson: If the Court please, I wanted to develop from the witness what this represented, if he knows.

The Court: That is agreeable to the Court, except that I would like to know sooner or later, and I would think [130] the logical time would be now, to identify it with reference to anything else, if anything else has been mentioned that is related to this subject you are inquiring about. In other words, has this any connection with the coolers?

Mr. Hokanson: That is what I would like to establish myself, Your Honor, from the witness.

Q. Do you recall what that shop order covered?

(Testimony of Harry F. Williams.)

A. "Furnish labor and material to repair circulating system of main engine as necessary"?

Q. Yes.

A. That could be some joints that had to be made, some valves that had to be ground in. It is the system of cooling the engine, could have been some pipes. Definitely, it is not clear enough here.

Q. I want to know, if you remember, what that particular shop order covered with respect to repairs to the circulating system?

A. The crew may have taken off pipes and valves, and if any of them were stiff or hung up or needed grinding in or testing, they were brought up to the shop, and that is why "furnish labor and material to the circulating system."

The Court: You have been talking before this last question was asked you about the coolers being removed from the engine room and about their being taken up to [131] the shop and cleaned and tested and returned to the engine room.

A. That is the same thing. It is part of the system.

Q. With respect to the work on the main engine room, such work as was done by Commercial Ship Repair was requested by you or the chief engineer, is that correct?

A. That is correct.

Q. And so with any particular shop order a directive would be given to Commercial Ship Repair as to what to do?

A. Verbally.

(Testimony of Harry F. Williams.)

Q. Prior to your leaving Winslow, which I understand to have been on October 8, and upon completion of the trial run of the vessel, did you as the owners' representative accept the ship for the owners as having been completed to your satisfaction?

A. I accepted the ship to this extent: that the work was done and the ship was ready to go to sea.

Q. Were you in Mr. Black's office on or about August 4, 1948, in the presence of Mr. Antippas, the master of the *Urania*, Mr. Black, Mr. Finn and Mr. Sweetin?

Mr. Howard: Objected to as repetitious.

The Court: If it is repetitious and you admit that it is, of course the objection should be sustained. Have you anything to say about that?

Mr. Hokanson: Your Honor, it certainly is repetition since the matter has already been covered. I am merely attempting to anticipate the possibility of a contradiction of the earlier testimony that has been given with respect to what was said at that meeting. As I understand it, this witness is from New York and I don't know whether he is going to be detained here for the duration of the trial, and I want to develop at this time such answers as are pertinent to the case.

The Court: Did you say that it is repetitious?

Mr. Hokanson: I said that the matter has already been covered, yes.

The Court: The objection is sustained. My ques-

(Testimony of Harry F. Williams.)

tion referred to whether it had been covered by this witness.

Mr. Hokanson: No, not by this witness, Your Honor.

Mr. Howard: If the Court please, I made a definite note here that that question was asked this witness yesterday afternoon on direct examination.

The Court: Do you recall having testified to that?

The Witness: I think I have.

The Court: The objection is sustained.

Q. Did you see Mr. Black on Friday, October 8, before leaving for New York?

A. I think I did.

Q. Do you remember where? [133]

A. At his office, if I saw him.

Q. Isn't it true that Mr. Black informed you at that time that under no consideration would the *Urania* be allowed to leave Winslow until payment or arrangements for payment had been made by the owners covering the bill for services?

A. He may have said that to me, yes.

Q. When did you arrive in New York?

A. On Saturday, about 12:00 o'clock.

Q. Did you see Mr. Antippas when you arrived in New York?

A. I ran into Mr. Antippas in New York in a restaurant, and we didn't talk about business, and I was to meet him on Monday.

Q. You had an appointment to see him on Monday?

(Testimony of Harry F. Williams.)

A. That is right. I said I would be over in the office on Monday.

Q. Had that appointment been made prior to your arrival in New York? A. No.

Q. Were you in communication with Mr. Antippas during the progress of the work on the Urania?

A. You mean the entire period?

Q. Yes. A. Off and on, yes.

Q. By telephone? [134] A. Telephone.

Q. Did you have your appointment with Mr. Antippas on Monday, October 11?

A. Mr. Antippas was called out of town and I did not see him.

Q. How do you know he was called out of town? A. Because I called the office.

Q. Did you attempt to see him thereafter?

A. Tuesday was a holiday.

Q. Did you attempt to see him on Wednesday?

A. Yes. I ain't sure whether it was Wednesday or Thursday I met him.

Q. Did you undertake to see him on Wednesday? A. I am not certain.

Q. Mr. Antippas was at Winslow sometime during the work on the Urania, was he not?

A. Yes.

Q. Did you have any discussions with him with respect to the progress of the work?

A. Yes, I did.

Q. Was he satisfied? A. Apparently.

Q. Did you have any discussion with him at any

(Testimony of Harry F. Williams.)

time during the period the work was being conducted concerning a progress payment? [135]

A. At one of his visits, I suggested to him that would he make a progress payment, and he said he would, but he wasn't bound to do it.

Q. Did you after that statement have any further discussion with him in person or by telephone?

A. I don't recall that I had contact with Mr. Antippas or his brother, but I did telephone, I think, on one occasion—two occasions.

Q. Concerning the progress billing?

A. Concerning the payment.

Q. What was said, if you remember?

A. It was left up to the General Steamship Company in Seattle to make the payment. The financial arrangements between them and Mr. Antippas I had nothing to do with, except that it was up to them to get it, and I think Mr. Lindgren went over there.

Q. Did you buy any parts for the main engine of the *Urania*?

A. That was up to me, yes. I bought some before I left New York, with Mr. Antippas' permission, and I also went to Oakland, California, to get a speedy delivery and bought some more additional parts.

Q. Do you remember what the price of the parts was that you purchased in Oakland, approximately?

A. I wouldn't want to guess. I haven't the bills. [136]

(Testimony of Harry F. Williams.)

Q. Did it amount to a substantial sum of money?

A. It did.

Q. Was it more than \$10,000?

A. I would be guessing now. I haven't the bills.

The Court: What did you say the purpose of your trip to Oakland was?

A. To get a speedy delivery on engine parts. They are so jammed you don't get a quick delivery.

The Court: Did you say, in substance, that you went there partly to speed up delivery?

A. Yes, sir.

The Court: Did you make a statement as to whether or not the cost of the engine parts which you purchased exceeded \$10,000? If so, will you repeat what you said?

A. I said I would be guessing, I wouldn't know. I haven't got the bills.

Q. Did you have full authority to purchase extra parts as necessary for the vessel?

A. Mr. Antippas gave me that privilege and power.

Q. And you had full authority, too, did you not, to order such additional work as you considered to be necessary in the conversion of the vessel?

A. I think so.

Q. And you did order the extra work, did you not? A. I did. [137]

Mr. Hokanson: That is all.

(Testimony of Harry F. Williams.)

Cross-Examination

By Mr. Howard:

Q. Your principal place of business is in New York?
A. 8 Bridge Street, New York City.

Q. Did you come to Seattle from New York for this trial?
A. I did.

Q. At whose request?
A. Mr. Antippas'.

Q. After your arrival in Seattle, were you served with a subpoena?
A. I was.

Q. By whom?

A. By this firm of—I don't know the man's name who gave it to me, but I went around the Athletic Club to see some of the boys, and I was handed a subpoena there.

Q. Were these gentlemen present at the time?

A. Yes, sir.

Q. That is, Mr. Hokanson and Mr. White?

A. That is right.

Were they the ones that served the subpoena on you?

A. No. They told me they didn't know I was coming and they didn't want me to get away, so they thought they [138] would subpoena me.

Q. At that time, did you discuss the details of this transaction relating to the *Urania* with Mr. White and Mr. Hokanson?
A. No.

Q. Did you have any discussion with them concerning the work that had been done on the *Urania*?

A. No.

Q. After your arrival at Seattle, did you have

(Testimony of Harry F. Williams.)

any discussion with Mr. White or Mr. Hokanson concerning the work on the Urania?

Mr. Hokanson: I object, Your Honor. The question has been asked and answered.

The Court: The objection is overruled.

A. I answered it. No.

Mr. Howard: I have no further questions at this time. We will call this witness when we present our case.

The Court: Subject to that right, you may step down, Mr. Williams, and do not absent yourself from the trial unless the Court further consents to that.

The Witness: Yes, sir.

Mr. Hokanson: For the record, we are willing to release Mr. Williams from any further requirement to remain so far as the subpoena served is concerned. [139]

The Court: Does the respondent wish to make any statement in that connection?

Mr. Howard: No, Your Honor. We arranged for this gentleman to come out from New York. I am sure he will comply with our request to stay.

The Court: So far as the subpoena is concerned, you are released from further responding to the requirements of that subpoena. I take it in that connection that one point libelants have in making the request that he be excused so far as the subpoena is concerned is to avoid accumulation of costs pursuant to the subpoena?

(Testimony of Harry F. Williams.)

Mr. Hokanson: That would be one factor, Your Honor, and in addition we have no desire to detain the witness; but if he is going to be called in the case of the cross respondents, we certainly would want the opportunity to keep him here, if necessary, to develop our case in rebuttal. That is something we cannot anticipate.

The Court: Mr. Hokanson, either you excuse him on the subpoena or you do not, and there are no ifs and ands about his obligation to further attend this trial so far as the subpoena is concerned if he is excused by the Court from further compliance with the subpoena. [140]

Mr. Hokanson: In the status of the case as it now stands, we are willing to release him from the subpoena.

The Court: The witness is released from any further obligations under and pursuant to that subpoena which he described while he was on the stand.

(Witness excused.)

J. J. FEATHERSTONE

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. James J. Featherstone.

Q. And your residence?

(Testimony of J. J. Featherstone.)

A. 4318 West Juneau Street, Seattle.

Q. What is your occupation?

A. At present, I am a ship repair contractor.

Q. Are you one of the partners of Commercial Ship Repair? A. I am. [141]

Q. What has been your experience in the ship-building and ship repair business?

A. I worked at it since 1912.

Q. Would you state the history of your experience?

A. I started apprenticeship in 1912, completed that in 1916 and worked as a mechanic until about 1921, have been a supervisor of ship repair work and alteration work and new construction work more or less ever since.

Q. In what yards, Mr. Featherstone?

A. 1921-1931 with Todd Seattle Drydocks in charge of the second shift, and then to Winslow for supervisor. In 1932, I had charge of construction of three Coast Guard cutters, and went back to Winslow, then went to Tacoma for Todd's in 1938, had charge of the second shift and construction of the first five C-1's. I left there when the war started, started building minesweepers for the Navy.

The Court: What did you say you began doing in 1916, after four years?

The Witness: I worked at the old Commercial Boiler Works.

The Court: What kind of work?

The Witness: Boiler shop work.

(Testimony of J. J. Featherstone.)

The Court: You said after you were an apprentice for four years, you then began something else. What kind of work were you doing? [142]

The Witness: I got out of my apprenticeship in 1916, and went to work at the old boiler works, went to work as boilermaker.

The Court: May I remind you that when you are asked to repeat your answer, the words you already used are desired, not some other words. I am trying to find out what you said you did before, in 1916. You called it some classification of work. Did you say you began as a mechanic in 1916?

The Witness: Correct, sir.

Q. Mr. Featherstone, in what capacity did you serve at the Winslow yard in 1941?

A. General superintendent, first going there as superintendent of steel construction, and got shoved up to the general superintendent's job about three months after I was there.

Q. In what year? A. 1941, I think.

Q. What were your duties as general superintendent of the Winslow yard?

A. In charge of all production work, alteration work, new construction, and everything pertaining to the outside operation of the shipyard.

Q. Did that include repairs?

A. Everything. [143]

Q. And what kind of work was being done at Winslow during that period that you served as general superintendent?

(Testimony of J. J. Featherstone.)

A. We were building 220 foot steel minesweepers on one side of the yard. Most of the time we had a million dollars or more of repair work kicking around the yard from time to time.

Q. How long did you remain in that capacity at Winslow?

A. Until the expiration of the contract.

Q. Which was when? In what year?

A. About 1945 or 1946; 1946.

Q. Upon the end of that period, what did you do?

A. I went out here and opened up a little shop for myself.

The Court: Where?

The Witness: At Seattle, in the south end of Seattle.

The Court: Was that on land or on water? If it was either on land or on water, state exactly where it was.

The Witness: It was on land.

The Court: Where?

The Witness: In the south end of Seattle.

The Court: Did it have an address, the place where you were doing this work? [144]

The Witness: No, sir.

The Court: It was not on any street and did not have any street address?

Mr. Hokanson: If Your Honor please, Mr. Featherstone is quite hard of hearing.

The Court: You may proceed.

(Testimony of J. J. Featherstone.)

Q. The Court is interested to know if your shop that you opened up after you left Winslow had an address? A. Yes.

Q. Do you remember the address?

A. I can't recall the name of the street. It was sort of a jumbled-up affair, sort of behind the Merchants' Exchange in South Seattle.

Q. What did you do at that shop?

A. Welding, and any work that might come along.

Q. Connected with ship repair?

A. Partially, yes.

Q. When did you first enter upon the partnership known as Commercial Ship Repair?

A. I can't recall the dates exactly.

Q. In what year? A. 1945, yes.

Q. Was it after you left the Winslow yard?

A. That is right.

Q. Were you in your Winslow yard on October 13, 1948? [145] A. Yes.

Q. Was the *Urania* lying afloat at your dock at that time? A. Yes.

Q. Were you advised of the date, of the sailing date of the *Urania*?

Mr. Howard: Just a minute. This is definitely a leading question. I will object to the form of the question.

The Court: Sustained.

Q. Did you know at that time what the plans for sailing were of the *Urania*?

(Testimony of J. J. Featherstone.)

Mr. Howard: Same objection.

The Court: Overruled.

Q. Did you understand the question?

A. No. I would like it repeated.

(Last question read by reporter.)

A. That was the 13th.

The Court: You should say yes or no, and let him ask another question.

Q. Can you answer the question? Mr. Featherstone, did you have any knowledge on October 13, 1948, as to the sailing plans of the *Urania*?

A. Yes.

Q. When did you learn of those plans? [146]

A. About noon. The captain come to me and told me——

The Court: About noon on what date?

The Witness: On the 13th, sir. The captain told me that he had ordered a pilot and intended to shove off as soon as possible.

Q. Did he state when he was to sail?

A. He planned to sail about 12 o'clock that night.

Q. Did you communicate that information to your partner, Mr. Black?

A. Yes. I called him immediately.

Q. Did you have any communications with Mr. Harry Williams on or about Monday, October 11, 1948?

A. Yes.

Q. What kind of communication?

A. I telephoned him in New York.

(Testimony of J. J. Featherstone.)

Q. Can you state what the substance of your telephone conversation was?

Mr. Howard: If you recall.

A. I asked him if he had made any effort to contact Mr. Antippas regarding the bill, as he knew the status of the ship and he knew what we intended to do if we did not receive payment before the ship left, that we were going to libel the ship.

Q. Do you remember what Mr. Williams said?

A. Yes. He said he was doing all within his power [147] to straighten the thing out, but to date had not had any luck, but would do all he could to contact Mr. Antippas and see what he could do.

Q. Did you have any further telephone conversation with Mr. Williams after October 11, if you remember?

A. Yes, I called him a second time.

Q. Do you remember when?

A. The day after.

Q. Do you remember the substance of that telephone conversation?

A. It seems as though it was a holiday in New York the following day. I was talking to him, I think on Tuesday, Monday or Tuesday. He said Wednesday was Columbus Day, therefore everything would be shut down and he would be unable to contact any of the officials of the company back there, he felt sure.

Mr. Howard: I believe the Court will take judi-

(Testimony of J. J. Featherstone.)

cial notice of the fact that Columbus Day is October 12th.

The Court: That may be true, but I am interested at this point in hearing the witness' testimony.

Q. On the occasion of this second telephone call, I understand you to have said that was on Tuesday, to the best of your recollection?

A. I think it was.

Q. Was anything said as to whether Mr. Williams had [148] yet seen Mr. Antippas?

A. No.

Q. Did he state whether he had or not?

A. No.

Q. Did you ever see Mr. Antippas at Winslow when the vessel *Urania* was undergoing repairs there? A. Yes.

Q. Do you remember when you saw him?

A. No, I don't know exactly what the date was.

Q. Do you remember what month it was in?

A. The month of September, I am sure.

Q. Where did you see him?

A. He came over to the shipyard to make a survey, on a visit.

Q. Did you talk to him? A. Yes.

Q. Was anyone else present besides Mr. Antippas and yourself?

A. Mr. Williams and the captain of the ship.

Q. What was the nature of your discussion, if you remember?

A. Sort of general, and we talked about the job.

(Testimony of J. J. Featherstone.)

Mr. Antippas did tell me that he thought we were doing a fine job, "keep up the good work, treat Harry right, be sure to give Harry anything he wanted." He voluntarily said, "I [149] will send you \$30,000 as soon as I get back to New York, which will be Monday." I didn't ask him for any money. He voluntarily told me that.

Q. Was there any discussion by Mr. Antippas as to Mr. Williams' authority at that time? Did you understand the question?

A. I thought you were addressing Mr. Howard.

Q. I am directing the question to you, I am sorry. Was there anything said by Mr. Antippas at that time concerning the authority of Mr. Williams in respect to the work on the vessel?

Mr. Howard: Answer yes or no on that.

A. No.

Mr. Howard: Can you answer yes or no to that question? A. I said no.

Q. Calling your attention to Libelants' Exhibit 1, do you know whether item 36 listed thereon was performed? Would you look at item 36?

A. I have seen it already.

Q. What is that item?

A. Remove designated section of bulkhead at forward ammunition storeroom.

Q. And your answer to my question as to whether that was performed is no? [150]

A. No, it was not performed.

Q. Why was it not performed?

(Testimony of J. J. Featherstone.)

A. Mr. Williams and Mr. Gallagher agreed that it had no—there would be no advantage in taking it out. It would have a tendency to stiffen the structure above the main deck, and they decided not to take it out and so instructed me.

The Court: Taking it? What is “it”?

The Witness: The ammunition bulkhead, sir.

Q. Did you discuss with Mr. Williams the fact that that item was deleted?

A. No, Mr. Williams and I talked the thing over later and we agreed, that is he and I agreed, to carry out certain other work to cover that item rather than open up a new item.

Q. In lieu of that item?

A. In lieu of that item, that is right.

Q. What was that other work?

A. Painting the superstructure and catwalk, running from abreast of the bridge to the forecastle, and all of the trunks and the main deck.

Q. What was the value of that work? Was the value of that work equal to the value of the amount set opposite item 36 on the exhibit before you?

Mr. Howard: That is objected to as leading.

The Court: The objection is sustained. You can ask him with reference to the relative value.

Q. What was the relative value of the work performed by you in lieu of item 36 as compared to the cost assigned to item 36 on the contract as originally made?

(Testimony of J. J. Featherstone.)

A. We agreed it was about comparable, Mr. Williams and I, to the cost on the renewal of the ammunition locker.

Q. Did you have any discussions or negotiations with Mr. Williams with reference to heating coils for the boiler on the *Urania*? A. Yes.

Q. Can you state what they were?

A. The heating coil was a spare part for the boiler.

Q. If you know, were boiler coils furnished to the *Urania*? A. Yes.

Q. There was more than one set furnished?

A. Yes.

Q. Who furnished them?

A. Commercial Ship Repair.

Q. Did you purchase them from someone else, or did you have them in stock?

A. We had them in stock.

Q. Did you agree with Mr. Williams on the price of those coils? [152] A. Yes.

Q. What price did you agree upon?

A. I have really forgotten now, we jabbered back and forth so much.

Q. Calling your attention to Libelants' Exhibits 4, 5 and 6, were you present when Mr. Williams signed those documents? A. Yes.

Q. Where was he when he signed them?

A. Mr. Lindgren's office.

Q. At Winslow? A. Yes.

Mr. Hokanson: Without prejudice to the ob-

(Testimony of J. J. Featherstone.)

jection which I have heretofore made concerning the integrity of these documents from collateral attack by parol evidence with respect to what was said when they were signed, and in anticipation of an attack by the claimant corporation and cross libellant here on the integrity of the signature, I propose to ask this witness a question concerning what was said at the time, if anything, when these documents were signed.

The Court: Would it be convenient to opposing counsel for this to be done now, or do you think the likelihood of that question being gone into by respondents in connection with that cross libel is such that the matter should be left until after that occurrence takes place?

Mr. Howard: I have no objection.

The Court: You may proceed, and it is without prejudice to your right, if any, to object at the other occasion in the future that you mention.

Q. Was anything said on the occasion of the signing of those documents by Mr. Williams?

A. Not that I recall.

Q. He signed them in your presence?

A. That is right.

Q. Were you present on the sea trial of the *Urania*? A. Yes.

Q. That was conducted approximately when?

A. On the 6th or 7th, I think.

Q. Of what month? A. Of October.

Q. Who was present besides yourself, apart from the crew of the vessel?

(Testimony of J. J. Featherstone.)

A. Mr. Williams, Mr. Gallagher of the American Bureau, one or two of our supervisors that were requested to go along in case something should happen, such as a pipefitter and an electrician.

Q. Were any of your employees in attendance on the vessel on the trial run? [154]

A. Only those that were requested by Mr. Williams and the chief engineer to act as observers in the engine room and carry out any work that the chief engineer might require.

Q. Do you recall how long a trial run the ship had?

A. Six or seven hours.

Q. Did the ship perform satisfactorily on that trial?

A. Very much so.

Q. Did Mr. Gallagher issue any instructions during the course of this trial, if you remember?

A. Yes. He and Mr. Williams and myself were in the engine room. There seemed to be some confusion regarding the way that the chief engineer was applying himself at the throttle. Mr. Gallagher requested that Mr. Williams temporarily remove the chief engineer from the throttle and put one of our men at the throttle to instruct the chief engineer how to properly operate the throttle.

It seemed as though he was not timing himself right in the matter of going ahead and going astern, insisted he could do certain things that were impossible to do by the nature of the engine.

Q. Were Mr. Gallagher's instructions carried out?

A. Yes.

(Testimony of J. J. Featherstone.)

Q. Were you on the dock trials of this vessel?

A. Yes. [155]

Q. Did the vessel perform satisfactorily on those occasions?

A. The same as any other dock trial I have ever been on.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Featherstone, did you attempt to contact Mr. Antippas or the shipowners' office on October 11? That is the date you stated you called Mr. Williams.

A. No. I talked to Mr. Black and I let him handle all of that.

Q. Can you just answer yes or no? Did you attempt to contact the shipowners or Mr. Antippas?

A. No.

Q. How about on October 12? Did you attempt to contact the shipowners, Mr. Antippas or his office at that time? A. No.

Q. You sent no wire or message to them at all on those days? A. I don't know.

Q. You don't recall having sent any?

A. Not myself, no. I am not speaking for the company.

Q. Handing you Respondent's Exhibit A-3, can you [156] recognize that document?

A. Yes, I recognize it now.

Q. Did you send that telegram? A. Yes.

(Testimony of J. J. Featherstone.)

Q. When was it sent?

A. I think it speaks for itself.

Q. Well, what is your recollection of when it was sent; morning, afternoon or evening of the day shown on it?

A. I don't recall.

Q. Mr. Featherstone, do you recall whether that telegram was sent before or after the ship was libeled?

A. I think it was sent before.

Q. That is your best recollection?

A. Yes.

Q. Will you look at the upper right hand corner and see if you can find a time date stamped on that exhibit before you now?

Mr. Hokanson: Are you asking him a question?

Mr. Howard: I am.

Mr. Hokanson: I submit, Your Honor, that he is directing the witness to perform an act and not to answer a question.

The Court: The objection is overruled.

Q. Do you find a time shown on there? [157]

A. No, I don't see it.

Q. Isn't it a fact that in the upper right hand corner of this Exhibit A-3, it shows 1948, October 13, P.M. 11:53?

Mr. Hokanson: Your Honor, I object. I submit the question is argumentative.

The Court: The objection is overruled. What is the answer?

The Witness: Yes.

Q. Did that refresh your recollection as to when that telegram was sent?

A. Yes.

(Testimony of J. J. Featherstone.)

Q. Can you state for us now whether the telegram was filed for dispatch before or after the ship was libeled? A. Before.

Q. Is that the first time that you had reported directly to the shipowner as to your intention with respect to libeling the ship? A. Yes.

Q. Then you had not previously advised the owner of your intention to libel the ship?

A. We had the owners' representative there at all times. It is customary in shipyards—we work with the owners' representative and not the owner.

Q. Aside from your discussions with Mr. Williams, you [158] had not reported your intentions directly to the shipowner?

A. No, but Mr. Williams had.

Q. You had not done so?

A. In my presence.

Q. Were you aware of the fact that the General Steamship Corporation was acting as agent for the vessel at Seattle? A. Yes.

Q. Had you notified them of your intention to libel the ship? A. Yes, sir.

Q. When did you do that?

A. A day or two before we did it.

Q. Did you do that yourself?

A. No. Mr. Black—I called Mr. Black and he talked to Mr. Lund at General Steam.

Q. You don't know of your own personal knowledge what Mr. Black did?

(Testimony of J. J. Featherstone.)

A. That is right. I know that Mr. Black did, though.

Q. Did you ever talk to anyone in General Steam yourself? A. Yes, sir.

Q. When?

A. Several times, two or three times before the ship sailed. [159]

Q. How long before the ship sailed?

A. From a week to three or four days.

Q. What did you tell them then with respect to the Yard's intentions and the payment of this bill?

A. I told them we would have to libel the ship if they didn't get some money to us or some collateral, some guarantee, that we would receive payment on account of it being a Panamanian ship under a Panamanian flag.

Q. To whom did you speak in the General Steamship Company at that time?

A. Mr. Lund.

Q. And your recollection is that you talked to him two or three days before the ship was libeled?

A. It might have been four days, yes, sir.

Q. Did you talk to him more than once?

A. I think I talked to him twice.

Q. You have a definite recollection of advising him of the intention to libel the ship?

A. Yes. Mr. Williams was there when I talked to him over the phone.

Q. Referring again to Libelants' Exhibit 5, do you have 5 before you now? A. Yes, sir.

(Testimony of J. J. Featherstone.)

Q. Is that the invoice for the extra and contract work or—— [160]

Mr. Kokanson: No. 5 covers the main contract and the extras.

Q. Why was item 36 left in that invoice when you prepared it if the work wasn't performed?

A. At the request of Mr. Williams.

Q. Is that your practice, to leave such items in the billing even though work has not been performed?

A. Yes. We swap items right along, you bet, hundreds of them.

Q. Isn't it a fact that at the time these invoices and final specifications were presented to Mr. Williams for signature on or about October 8, that he advised you at that time he could not approve the amounts for the extra work? A. No.

Mr. Hokanson: For the record, my objection again with respect to collateral attack upon a written instrument, violation of the parol rule.

The Court: The objection is overruled.

Q. Your answer, please? A. No.

Q. Do you recall any statement having been made by Mr. Williams at the time these invoices and specifications were presented to him for approval?

A. There is always chatter, language that goes—when you are settling a bill, naturally a surveyor—I am [161] walking through the office, he is talking to Mr. Lindgren. There is bound to be some con-

(Testimony of J. J. Featherstone.)

versation regarding bills, I would be foolish to say there was none. Settling a bill of this kind, there is always a certain amount of talk, but there was no disagreement to any extent.

Q. Isn't it a fact that Mr. Williams told you he could only approve the bills and the invoices, specifications as to the work being performed and not as to the amounts? A. No.

Mr. Hokanson: Same objection.

The Court: Overruled.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. In answer to one of Mr. Howard's questions, you stated that Mr. Williams had in your presence notified Mr. Antippas of your intention to libel the vessel unless the bill was paid, is that correct?

A. He intimated through his conversation there was that liability, and why didn't he get some money out here.

Q. Was that a personal conversation?

A. He said, "Why don't you get some money out here so I can get back to New York and we can release this ship." [162]

Q. Was that a telephone conversation?

A. Yes, in Mr. Lindgren's office.

Q. Who made the call?

A. The captain made the call and was talking to Mr. Antippas, and immediately after the captain got through, Mr. Williams took the phone and

(Testimony of J. J. Featherstone.)

warned him we intended to libel the ship if we didn't get our money.

Q. You were present during the period of that conversation? A. Yes.

Q. Mr. Featherstone, were you at Winslow, Washington, when the United States Marshal went aboard the *Urania* with process to libel the vessel?

A. Yes.

Q. That was on October 13? A. Yes.

Q. Do you remember what time of day that was?

A. Kind of late in the evening.

Q. Do you remember the hour?

A. About 9:30 at night.

Q. Are you sure it was that late?

A. It might have been 8:30 or 8, from 8 to 8:30 in the evening.

Q. You don't know the exact time?

A. That is correct. [163]

Q. So that you wouldn't be sure whether that wire was sent before he arrived or after he arrived, referring to the Marshal?

A. I don't know.

Mr. Hokanson: That is all.

Recross-Examination

By Mr. Howard:

Q. What was the date of this telephone conversation in Mr. Lindgren's office at which time you report that the captain and Mr. Williams talked with Mr. Antippas? Can you relate that as to the other dates we have been talking about?

(Testimony of J. J. Featherstone.)

A. Probably not exactly, but Mr. Williams left on—I took him to the airport myself on Friday, I think it was about Wednesday, Thursday or Friday.

Q. It would have been a day or two before Mr. Williams left Seattle for New York?

A. I don't know.

Mr. Hokanson: I am going to object to this as beyond the scope of proper recross-examination. He developed this in his cross-examination. He is now developing it again on recross-examination.

Mr. Howard: If the Court please, this matter of the telephone conversation in Mr. Lindgren's office was developed on redirect examination.

The Court: You are not talking about the telegram; you are talking about the telephone conversation?

Mr. Howard: That is correct, in Mr. Lindgren's office, that this witness testified to for the first time on redirect examination.

The Court: You may inquire. The objection is overruled.

Q. Isn't it a fact that the invoices for the work performed on the *Urania* had not yet been prepared at the time this alleged telephone conversation was had?

A. They were worked up pretty well, only one or two items that were not completed.

Q. Had any invoices been presented to the owners or their representatives yet?

A. The owners' representative—they were

(Testimony of J. J. Featherstone.)

worked up, we had them right in order, but we were just about ready to have the signature on them.

Q. Referring to Exhibit 5, I believe you have it in front of you there, what is the date on that invoice?

A. Repeat that.

Q. Referring to Exhibit 5, will you please state the date of that invoice, that exhibit?

A. October 8.

Q. And that was the day that Mr. Williams left Seattle [165] for New York, isn't it?

A. I don't know, about October 8. I don't know whether it was or not.

Mr. Howard: I have no further questions.

Mr. Hokanson: That is all.

The Court: You may step down.

(Witness excused.)

The Court: At this point we will take a ten minute recess.

(Recess.)

FREDERICK J. HARPER

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name.

A. Frederick J. Harper.

Q. What is your residence?

A. Winslow, Washington.

(Testimony of Frederick J. Harper.)

Q. Your occupation?

A. I am chief accountant for Commercial Ship Repair. [166]

Q. How long have you been so employed?

A. Since April 1, 1948.

Q. What was your employment prior to that time?

A. For ten years prior to that, I was employed by the Winslow Marine Railway & Shipbuilding Company.

Q. In what capacity?

A. I originally went to work for them as accountant. I was advanced to supervisor accountant in 1941, and to assistant secretary and chief accountant in 1944.

Q. What is your training in accounting work?

Mr. Howard: We will concede that Mr. Harper is a qualified accountant.

Mr. Hokanson: Very well.

Q. Do you have charge of sending invoices and bills out from the Winslow yard? A. I do.

Q. Did you in September and October of 1948?

A. I did.

Q. Handing you what has been marked for identification as Libelants' Exhibit, can you state what that is?

A. That is an invoice to the Motor Tanker *Urania* and owners, dated September 8, 1948, covering progress billing No. 1, account repairs and alterations of the Motor Tanker *Urania* in the amount of \$30,000.

(Testimony of Frederick J. Harper.)

Q. Do you know whether the original of that document [167] was ever mailed?

A. I know that it was mailed in the regular course of mailing invoices, together with other pieces of mail, on the date it was made up.

Q. The document bears a signature, does it not?

A. It does.

Q. Do you recognize it? A. I do.

Q. Whose signature is it?

A. Mr. H. F. Williams.

Q. Was it signed in your presence?

A. It was.

Mr. Hokanson: I offer the exhibit in evidence.

Mr. Howard: I would like to interrogate the witness about this exhibit.

The Court: Concerning its admissibility only.

Mr. Howard: Did you yourself mail this document?

The Witness: I did not put it in the U. S. Post Office box. I mailed it in our outgoing mail box, and it would be picked up in the normal course of business by the truck driver and taken to the Post Office.

Mr. Howard: I object to the admissibility of this exhibit, the offer of this exhibit, on the ground that it has not been sufficiently established as to the mailing of the exhibit so that it would be pertinent [168] as a matter in the consideration of this case.

The Court: Do you object that the mailing of it has not been proved?

(Testimony of Frederick J. Harper.)

Mr. Howard: Yes, Your Honor.

The Court: The Court reserves ruling for further testimony, if you desire to give it. One thing that is needed to be known in connection with it is whether or not postage was prepaid on it.

Q. Mr. Harper, do you have a recollection of making out that invoice?

A. I do. This invoice was prepared after my discussion with Mr. Williams, asking him in what manner he wanted an invoice prepared for an advance of \$30,000. I was advised that we were to receive that advance. He talked with his owners—

Mr. Howard: I move to strike that part of the answer as not responsive to the question.

The Court: Just answer the question, and nothing else. Counsel inquiring will direct the answers by proper questions. Proceed.

Q. Do you remember whether the invoice was placed in an envelope? A. I do.

Q. Do you remember whether postage was placed upon the envelope? [169]

A. Postage was placed upon the envelope.

Q. Do you remember who put it on?

A. I did.

Q. What did you then do with the envelope?

A. I put it in the outgoing mail box at the yard.

Q. What is the custom with respect to your mailing practice at Winslow?

A. That is the custom. The mail is picked up by the truck driver and taken to the Post Office.

(Testimony of Frederick J. Harper.)

Q. Do you know whether the mail on September 8 was picked up?

A. Yes, I know. I checked the box the following morning to be sure the mail had been picked up, and there was no mail there on September 9.

Q. Is it your usual practice to check the mailbox the following morning? A. Yes.

Q. How long had that system of mailing correspondence obtained in the Winslow yard, to your knowledge?

A. Well, that has always been the practice. We are not close to the Post Office, it is about half a mile. The mail is picked up by the truck driver and taken to the Post Office. He picks it up from the Post Office and brings it down to the yard, the incoming mail.

Q. Who was the truck driver who performed that duty [170] in September, 1948, if you know?

A. It was either Mr. Barlow or Mr. Stretch. Mr. Stretch, our purchasing agent, often takes the mail up.

Q. Are both of those men in the employ of Commercial Ship Repair now? A. Yes.

Q. Was the envelope in which the invoice was placed addressed on the outside? A. Yes.

Q. To whom was it addressed?

A. It was addressed to Compania Naviera Limitada, c/o Simpson, Spence & Young, 52 Broadway, New York City, New York.

Q. Was a return address on the outside of the envelope, if you know? A. Yes.

(Testimony of Frederick J. Harper.)

Q. What was that return address?

A. It was a regular Commercial Ship Repair envelope. I don't recall whether the return address was Winslow or Bell Street. It was a printed envelope.

Mr. Hokanson: Your Honor, I again offer in evidence what has been marked for identification as Exhibit 2, with the request of the Court to allow me to introduce further evidence by the truck driver if the Court indicates that that is a necessary link in proof. [171]

Mr. Howard: Your Honor, I would like to renew our objection to the offer of this exhibit.

The Court: Then the Court will not rule upon it until further testimony is produced.

Mr. Howard: May I make a further statement?

The Court: You may do so.

Mr. Howard: My reason for making this objection is that our clients, our principals, deny receipt of it. I do not want to unduly prolong this hearing as to the necessity of further proof as to mailing, but I feel I must maintain an objection to the offer of this exhibit because of our insistence that the document was not received.

The Court: Do you object there is not sufficient proof as to prepayment of postage?

Mr. Howard: We have only the testimony of this witness on that.

The Court: The Court will not rule upon it unless and until I find out whether or not there is available further testimony.

(Testimony of Frederick J. Harper.)

Mr. Hokanson: We will submit further testimony as to mailing, and in view of that offer, with the Court's permission, I would like this witness to be allowed to testify further with respect to this document on the assumption that it will eventually be admitted in [172] evidence. I recognize that that is a procedure which is out of order, so that it may not be necessary to recall Mr. Harper.

The Court: One way of doing it, possibly, will be to promise the Court that you will supply certain testimony. That would be one way of doing what I think you have in mind, but what you have said so far does not amount to that.

Mr. Hokanson: May it please the Court, I can assure the Court that we will make every effort to establish that the document was mailed. The drivers Mr. Harper has testified to are still in the employ of Commercial Ship Repair and we will produce them. Whether the Court, after their testimony, will admit the document, of course, I cannot say, but with that statement I would further move the Court that I be allowed——

The Court: I think you should be prepared to say what further testimony you expect to offer.

Mr. Hokanson: I propose to present testimony by the truck driver who on the date of September 8 carried the mail to the U. S. Post Office and establish by him that all mail in the mail receptacle on that date was delivered and put in the United States mail. I submit that if this is established,

(Testimony of Frederick J. Harper.)

that we have [173] furnished all the necessary proof in respect of mailing.

Mr. Howard: If the Court please, I withdraw my objection to the admissibility of this document.

The Court: Libelants' Exhibit 2 is now admitted.

(Libelants' Exhibit 2 received in evidence.)

lists in All Types
Ship Repair

INVOICE
12322
COMMERCIAL SHIP REPAIR
PIER 35 - 501 - STREET TERMINAL
SEATTLE 1, WASHINGTON

CAUSE 15766
LIBELANT EXHIBIT 2
APR 8 - 1949 TELEPHONE
MAIN 3122

M.Y. "Urania" and Owners
Compania Naviera Limitada,
Panama

c/o Simpson, Spence & Young
52 Broadway
New York City, N. Y.

SEATTLE 1, WASHINGTON

Invoice Date

Invoice No

Requisition No

Contract No

Via

Sept. 8, 1948

9-2 Winslow Div.

Job No. 677

NET CASH

Attention: Mr. D. Antippos

DESCRIPTION	PRICE	AMOUNT
<p><u>Progress Billing No. 1</u></p> <p>To progress payment No. 1 a/c repair and alteration to M.Y. "Urania"</p> <p><u>25,000.00</u></p> <p>130,000.00</p> <p><u>AMOUNT</u></p> <p><u>N F Williams</u> Mr. N. F. Williams Owners' Representative</p>		

(Testimony of Frederick J. Harper.)

Q. Referring to Exhibit 2, it bears certain pencil notations. Do you know whose handwriting that is?

A. It is my handwriting.

Q. Was it on the original invoice?

A. It was not.

Q. When was it placed on that invoice, the copy which has been admitted?

A. It was placed on this invoice at the time of preparing another invoice to the Motor Tanker *Urania* and owners, c/o General Steamship Company, in the amount of \$25,000.

Q. Showing you Respondent's Exhibit A-2, do you recognize that document?

A. I do.

Q. What is it?

A. It is an invoice to the Motor Tanker *Urania* and owners, c/o General Steamship Company, *Compania Naviera Limitada*, Panama, c/o General Steamship Company, dated [174] October 4, progress billing account repairs and alterations to Motor Tanker *Urania*, \$25,000.

Q. Will you explain the reason for the pencil notations on Libelants' Exhibit 2?

A. The pencil notations were made by me for the purpose of instructing the girls to prepare the new invoice, dated October 4.

The Court: Bearing what, if any, exhibit number?

The Witness: Bearing Respondent's Exhibit A-2.

Q. What have you marked on Libelants' Exhibit 2?

(Testimony of Frederick J. Harper.)

A. I have crossed out "c/o Simpson, Spence & Young" with a pencil and put in "c/o General Steamship Company." I have likewise crossed out "\$30,000" and above it written "\$25,000" in pencil.

Q. At whose instruction was that new billing made?

A. I prepared the billing after discussion with Mr. Williams and Mr. Lindgren, I believe. The fact that there was \$25,000 at General Steamship's office which we could obtain if we submitted a new invoice in that amount.

Q. Handing you Libelants' Exhibits 4, 5 and 6, were you present when those documents were signed?

A. I was present when they were signed.

Q. Where were they signed?

A. They were signed at the office at Winslow, Washington. [175]

Q. Do you remember the date?

A. October 8.

Q. And the year? A. 1948.

Q. Who else was present?

A. Mr. Lindgren was present, Mr. Featherstone was present, and myself, Mr. Williams. I don't recall anyone else.

Q. Did you witness the signing of them?

A. I did.

Mr. Hokanson: Again, Your Honor, without prejudice to our objection to the necessity of going behind the signature, reserving that objection, I will

(Testimony of Frederick J. Harper.)

ask the witness what was said if anything by Mr. Williams during the period when these documents were signed, if he remembers.

A. I remember that there was some discussion as to whether the sales tax applied, it being Mr. Williams' thought that sales tax, particularly on the invoice for spare parts, did not apply inasmuch as they were going out of the State of Washington. I believe I told him that since delivery was made in the state that the sales tax would apply.

Q. Did Mr. Williams make any other comment?

A. I don't recall him making any other comment.

Q. Did he comment with respect to the amount of the [176] invoices? A. No.

Q. Were you present at any time on or about October 6th or 7th or 8th when Mr. Lindgren and Mr. Williams were discussing Exhibits 4, 5 and 6?

A. I was present during the time that Mr. Williams and Mr. Lindgren were negotiating the price which was arrived at and is on these exhibits.

Q. Do you remember the date?

A. It was three or four days prior to October 8. They were negotiating all during that period.

Q. Do you recall any conversations that were had between Mr. Williams and Mr. Lindgren concerning the prices?

A. No, I do not. I didn't enter into the negotiation of the price. I was there, however.

Mr. Hokanson: May it please the Court, we have

(Testimony of Frederick J. Harper.)

heretofore announced our position with respect to the bills which have been presented in evidence to the effect that we conceive them to be an account stated, and that they represent the acceptance and approval by the owners of the *Urania*, which in turn eliminates any need for the libelants in their case in chief to establish the reasonableness of the prices.

I think by virtue of the stipulation entered into between Mr. Howard and myself concerning Libelants' [177] Exhibit 1, we are concerned here only with the price involved in the extra work known as Job Order 678 and with the price of the so-called spare parts which are contained on Libelants' Exhibit 6.

In view of the Court's ruling that the respondent may impeach, or present evidence tending to impeach the documents and the accounts stated, we propose at this time to present evidence through this witness with respect to how the records were kept on each of these jobs and as tending to show the reasonableness of the amount, reserving at all times our objection to the need to go behind these documents.

The Court: You may proceed.

Q. Mr. Harper, as chief accountant do you have charge of the records that are kept by Commercial Ship Repair at Winslow covering all items of labor, materials and services that are furnished to vessels under repair? A. I do.

(Testimony of Frederick J. Harper.)

Q. Would you describe what your system is for maintaining those records? May I add this to the question, what your practice was between August 6 and October 13, 1948?

A. We have developed a cost system based upon the elements of cost; namely, labor, direct purchase material, stores material and overhead that go to make up the cost of a job. Our labor is evidenced by time cards. These time [178] cards are weekly cards. They show on there the man's name, his occupation, his rate, the days that he worked during that week, and the distribution of his time. In other words, on which job he worked during that week and on any particular day. These cards are rated, the man's rates put on them. They are extended and from that a distribution of time is made up. The card is the basis for the payment to the man.

In connection with the items of material, we maintain at Winslow a stores account. We have a warehouse. Items drawn from that stores for use on any particular job are evidenced by a stores issue which is made up at the time the stores are withdrawn.

Further evidence of costs are direct purchases. The purchasing agent makes a purchase, he prepares a purchase order and submits it to the vendor, or the original copy. Two copies are maintained by the accounting department on that purchase order. It shows the job number on which the pur-

(Testimony of Frederick J. Harper.)

chase is made and the allocation of the purchase. To that purchase order, we attach our bill from the vendor when it is received and it is on the basis of that purchase order that payment is made.

Q. Do you have charge of those records?

A. I do.

(Time cards marked Libelants' Exhibit 9 for Identification.) [179]

Q. Handing you what has been marked for identification as Libelants' Exhibit 9, will you state what they are?

A. These are the time cards for the period the Motor Tanker Urania was in the yard.

Q. They are compiled on a weekly basis?

A. They are.

Q. And cover the entire period of the Urania at work? A. Yes.

Q. Are those cards used in connection with the time clock?

A. Yes, they are. On the face of the card is the man's name and his occupation, etc., as I have explained, and a place for a time clock punching by days, Monday through Sunday of any week.

Q. Who makes the entries on those cards?

A. They are made by clerks in the office.

Q. On what basis?

A. From information received from the foreman on the job.

Q. And those records are kept in the usual course of business at all times? A. Yes.

(Testimony of Frederick J. Harper.)

Q. How is it determined as to what particular job the time of any employee should be allocated?

A. At the time a job comes into the yard, a job order is issued. That order is given a number, and from that job order the foreman allocates the time of the people under his supervision to what they are working on.

Q. Who makes up the compilation of time from the cards?

A. That is made up in the office under my direction. The card at the end of the week is totalled. The man's pay is computed and the distribution of that time is made to the various job numbers.

Q. Referring to the time cards, the notation "hull number" appears on the reverse side thereof, does it not?

A. On the reverse side, there is job number and item number, the account number. A job number and hull number mean the same thing.

Q. In other words, hull number refers to the job number? A. Correct.

Q. And does not necessarily refer to a separate ship? A. That is correct.

Mr. Hokanson: I offer these cards at this time.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 9 received in evidence.)

(Book of records marked Libelants' Exhibit 10 for Identification.) [181]

(Testimony of Frederick J. Harper.)

Q. Handing you what has been marked as Libelants' Exhibit 10 for identification, will you state what that is?

The Court: If you know.

A. That is the stores issue for material issued from stock on hull No. 678 and hull No. 680 covering repair work on the Motor Tanker Urania.

Q. Hull No. 678 refers to what work, if you know, on the Urania?

A. Hull No. 678 refers to the additional work under the contract.

Q. Exclusive of the work that was done under the initial contract that was entered into?

A. That is true.

Q. What about 680?

A. 680 represents further additional work that was done exclusive of that contract.

Q. And that was designated as a separate item?

A. Yes, it is.

Q. Does that exhibit represent all of the stores issues for those two job orders?

A. I believe so, yes.

Q. And are those records kept under your supervision? A. Yes.

Mr. Hokanson: I offer these at this time.

Mr. Howard: No objection. [182]

The Court: Libelants' Exhibit 10 is admitted.

(Libelants' Exhibit 10 received in evidence.)

Q. Would you state briefly to the Court how those records are kept and what they represent?

(Testimony of Frederick J. Harper.)

A. These records are made up during the progress of a job. They represent the material, the value of the material that has been withdrawn from a stock account which is maintained in the warehouse of the company at Winslow.

(Binding case of records marked Libelants' Exhibit 11 for Identification.)

The Court: Referring to Libelants' Exhibit 10, does that in any way concern Job Order 677?

The Witness: No, sir.

The Court: Have you heard mentioned here at this trial before you just at this moment mentioned it, Job Order 680?

The Witness: I do not recall it.

The Court: You did mention that as being covered by Libelants' Exhibit 10, did you not?

The Witness: Yes, I did.

The Court: And also you refer to Job Order 678 as being referred to in this Libelants' Exhibit 10, did you not?

The Witness: Yes, sir. [183]

The Court: State, if you know, what Libelants' Exhibit 11 is.

The Witness: It is a copy of the purchase order, copy of the invoice on purchases made by Commercial Ship Repair in connection with repairs to the Motor Tanker Urania.

Q. Referring to that exhibit, did that cover all of the direct purchases for all the work on the Urania? A. Yes, sir.

(Testimony of Frederick J. Harper.)

Q. To the best of your knowledge?

A. To the best of my knowledge, it does.

Q. Those records are kept under your supervision?
A. Yes, they are.

Mr. Hokanson: I offer the same.

Mr. Howard: That covers both contract and extra work?

The Witness: Yes, sir.

Mr. Howard: It is not segregated in any way in that exhibit as you have it before you?

The Witness: Yes, it is segregated by hull numbers.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 11 received in evidence.)

Q. Referring to Libelants' Exhibit 4, do you know whether the item referred to on Exhibit 10 as 680 is included in the total amount of that additional work?
A. I believe it is, yes.

Q. And 680 was just a separate designation for your internal records covering the additional work, is that correct?
A. Yes, sir.

Q. Have you made an analysis of Exhibits 9, 10 and 11?
A. I have.

(Cost schedule marked Libelants' Exhibit 12 for Identification.)

(Testimony of Frederick J. Harper.)

LIBELANTS' EXHIBIT 12
Schedule "C"

	Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total	Sales	Profit or Loss
Hull 677 ----- Plus costs accumulated un- der 678 properly applicable to Hull 677 per Schedule "B," -----	8,522 ³	15,307.49	4,352.56	7,980.90	9,860.30	37,501.25	41,655.00	
	488 ⁵	894.52	56.23	336.50	565.19	1,852.44		
	9,010 ⁸	16,202.01	4,408.79	8,317.40	10,425.49	39,353.69	41,655.00	2,301.31
Hull 678 and 680 ----- Less costs accumulated un- der Hull 678 properly appli- cable to Hull 677 per Sched- ule "B," -----	9,976 ¹	17,956.67	2,603.24	8,873.12	11,543.19	40,976.22	45,111.46	
	488 ⁵	894.52	56.23	336.50	565.19	1,852.44		
	9,487 ⁶	17,062.15	2,547.01	8,536.62	10,978.00	39,123.78	45,111.46	5,987.68
Total Cost Hulls 677, 678 and 680 -----	18,498 ⁴	33,264.16	6,955.80	16,854.02	21,403.49	78,477.47	86,766.46	8,288.99

Note: Above costs do not include value of 2 sets of coils for Clayton boiler.
Admitted Apr. 8, 1949.

(Testimony of Frederick J. Harper.)

Libelants' Exhibit 12—(Continued)

Schedule "B"—Sheet 1 Only

Item No.	Hull 678	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total
2	-----	60 0	105.46	4.70	-----	69.42	179.58
15	-----	77 5	139.60	8.95	-----	89.67	238.22
23	-----	2 5	3.62	3.15	-----	2.89	9.66
25	-----	77 0	137.20	2.20	153.45	89.09	381.94
31	-----	20 0	37.92	1.07	-----	23.14	62.13
37	-----	5 5	9.33	-----	-----	6.36	15.69
49	-----	93 0	173.18	16.06	170.70	107.60	467.54
59	-----	1 0	1.75	-----	-----	1.16	2.91
69	-----	83 5	162.46	14.44	12.35	96.61	285.86
71	-----	20 5	41.21	.11	-----	23.72	65.04
78	-----	9 0	13.30	.53	-----	10.41	24.24
82	-----	16 0	28.74	-----	-----	18.51	47.25
92	-----	15 0	26.75	-----	-----	17.36	44.11
109	-----	8 0	14.00	5.02	-----	9.25	28.27
		488 5	894.52	56.23	336.50	565.19	1,852.44

Above represents costs accumulated under Hull 678 properly applicable to Hull 677.

(Testimony of Frederick J. Harper.)

Libelants' Exhibit 12—(Continued)
Schedule "A"—Sheet 1

Item No.		Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
1	Hull 678	638 9	1,156.28	.....	.....	739.21	1,895.49
2	.....					
3	.....	53 0	98.77	53.15	55.00	61.32	268.24
4	.....	50 5	91.26	.....	.....	58.43	149.69
5	.....	8 0	14.00	11.26	.....	9.26	34.52
6	.....	1,545 6	2,746.71	304.61	1,369.72	1,788.26	6,209.30
7	.....	205 5	396.65	.....	.....	237.76	634.41
8	.....	10 0	18.00	4.67	2,338.34	11.57	2,372.58
9	.....	458 0	823.50	53.57	1,721.35	529.91	3,128.33
10	.....	992 4	1,782.73	138.67	106.60	1,148.21	3,176.21
11	.....	4 0	7.00	.....	42.05	4.63	53.68
12	.....	23 0	47.39	7.21	.....	26.61	81.21
13	.....	26 0	45.50	6.89	.....	30.08	82.47
14	.....	657 0	1,178.93	39.90	131.48	760.15	2,110.46
15	.....					
16	.....	74 0	133.34	9.75	.....	85.62	228.71
17	.....	57 0	105.55	10.08	.....	65.94	181.57
18	.....	72 0	118.68	4.78	.....	83.30	206.76
19	.....	42 5	75.98	12.06	.....	49.17	137.21

(Testimony of Frederick J. Harper.)

LIBELANTS EXHIBIT 12 (Continued)

Schedule "A"——Sheet 1

Item No.	“Urania”	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
20	47 0	75.41	.....	.....	54.37	129.78
21	954.40	.....	954.40
22	3 0	5.25	.....	.....	3.47	8.72
23						
24	194 3	355.83	7.14	127.93	224.81	715.71
25						
26	105 0	187.61	121.16	22.03	121.49	452.29
27	45 5	79.39	43.84	229.35	52.64	405.22
28	78 0	142.44	.....	.....	90.24	232.68
29	46 0	83.09	.....	.....	53.22	136.31
30	93 0	165.22	3.06	.....	107.60	275.88
31						
32	5 0	8.65	2.76	.....	5.78	17.19
33	1.96	16.10	.....	18.06
34	8 0	14.00	4.50	.....	9.26	27.76
35	143 5	256.85	39.84	.....	166.03	462.72
36	2 0	4.30	.....	.....	2.31	6.61
37						
38	410 7	717.40	22.23	65.96	475.18	1,280.77
39	4 0	6.40	2.09	223.78	4.63	236.90

(Testimony of Frederick J. Harper.)

Schedule "A"——Sheet 1

Item No.	Hull 678 (Continued)	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
40	32 0	54.80	4.37	.....	37.02	96.19
41	142 0	261.97	44.23	113.39	164.29	583.88
42	101 5	187.06	33.82	.....	117.43	338.31
43	20 7	58.80	22.62	.....	23.95	105.37
44	143 0	257.09	99.08	.....	165.45	521.62
45	188 5	340.50	40.32	.....	218.09	598.91
		6,730 1	12,102.33	11,496.62	7,517.48	7,786.69	28,556.12

Schedule "A"——Sheet 2

Item No.	Hull 678 (Continued)	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
46	77 0	143.98	105.24	3.41	89.09	341.72
47	8 0	15.74	3.76	.....	9.25	28.75
48	201 0	368.63	33.94	121.35	232.56	756.48
49						
50	145 0	259.38	39.73	.....	167.76	466.87
51	156 5	273.79	28.80	.....	181.07	483.66
52	7 0	16.84	.....	4.00	8.10	28.94
53	149 0	264.00	17.25	.....	172.39	453.64
54	6 0	11.42	7.53	.....	6.94	25.89
55	19 0	33.90	2.95	.....	21.98	58.83
56	228 5	408.52	196.28	.....	264.37	869.17
57	154 5	276.49	56.78	.....	178.76	512.03

(Testimony of Frederick J. Harper.)

Libelants' Exhibit 12—(Continued)

Schedule "A"—Sheet 2

No. Item	Hull 678 (Continued)	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
58	47 0	85.53	.....	.....	54.38	139.91
59						
60	21 5	37.82	.....	.....	25.88	63.70
61	16 0	28.32	.....	.....	18.51	46.83
62						
63						
64	45 5	77.60	.....	.....	52.64	130.24
65	131 5	238.38	25.77	49.00	152.14	465.29
66						
67	12 0	21.74	.86	133.10	13.88	169.58
68	26 0	45.00	2.25	.....	30.08	77.33
69						
70	45 5	87.82	35.02	.....	52.64	175.48
71						
72	24 0	44.09	3.35	15.96	27.76	91.16
73	30 0	51.16	20.12	16.00	34.71	121.99
74	11 0	21.17	.....	.....	12.73	33.90
75	33 0	60.41	.27	.....	38.18	98.86
76						
77	101 5	182.13	12.77	.....	117.43	312.33

(Testimony of Frederick J. Harper.)

Libelants' Exhibit 12—(Continued)

Schedule "A"—Sheet 2

Item No.	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
Hull 678 (Continued)						
78	54 ⁰	97.38	36.51	-----	62.48	196.37
79	2 ⁰	3.50	-----	-----	2.31	5.81
80	48 ⁰	87.82	8.41	1.37	55.53	153.13
81						
82						
83	2 ⁰	3.50	-----	-----	2.31	5.81
84	19 ⁵	36.15	7.23	-----	22.56	65.94
85	128 ⁵	229.54	24.77	-----	148.68	402.99
86			21.13	-----	-----	21.13
87	87 ⁰	141.02	5.75	-----	100.65	247.42
88	24 ⁰	45.68	-----	-----	27.76	73.44
89						
90	7 ⁰	13.25	-----	110.80	8.10	132.15
	8,798 ¹	15,814.03	1,846.09	7,972.47	10,180.30	35,812.89

(Testimony of Frederick J. Harper.)

Libelants' Exhibit 12—(Continued)

Schedule "A"—Sheet 3

Item No.	Hull 678 (Continued)	Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
91	78 0	138.67	509.66	6.12	90.24	744.69
92	17 0	28.60	.46	107.00	19.67	155.73
93	2 0	3.50	.....	.....	2.31	5.81
94	35 0	63.91	.62	24.00	40.50	129.03
95	9 0	15.40	.....	.....	10.41	25.81
96	19 0	34.92	.....	.....	21.98	56.90
97	65 0	122.44	93.75	.....	75.20	291.39
98	8 0	15.00	12.33	5.25	9.25	41.83
99	32 0	61.20	37.90	.....	37.02	136.12
100	2 0	4.00	.....	10.75	2.31	17.06
101	12 0	24.00	.....	25.00	13.88	62.88
102	4 0	7.00	.....	28.00	4.62	39.62
103	2 0	3.50	.....	35.00	2.31	40.81
104	22 0	41.25	13.51	30.00	25.45	110.21
105						
106						
107	74 0	124.62	13.69	.....	85.62	223.93
108	33 0	60.83	.....	.....	38.18	99.01
109						
110	30 5	53.99	16.14	.....	35.29	105.42
Unallocated	22 5	44.21	.....	72.58	26.03	142.82
	222 5	401.08	2.86	220.45	257.43	881.82
Hull 680						
		9,487 6	17,062.15	2,547.01	8,536.62	10,978.00	39,123.78

(Testimony of Frederick J. Harper.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 12, if you know state what it is?

A. It is a schedule of the costs of repair on the Motor Tanker Urania. It is a recapitulation of costs from the records.

Q. What records?

A. The stores issues, the time sheets, materials, direct purchase.

Q. On No. 12, have you set forth the items of labor and material and overhead that you earlier mentioned with respect to 678 and 680?

A. Yes, I have.

Q. You are acquainted with the document which you [185] now hold which has been marked as No. 12?

A. Yes.

Q. You know it reflects accurately the records which we have just been talking about, namely, Exhibits 9, 10 and 11?

A. Yes.

Mr. Tokanson: I offer his analysis at this time.

Mr. Howard: No objection.

The Court: Libelants' Exhibit 12 is admitted.

(Libelants' Exhibit 12 received in evidence.)

Q. Referring to Exhibit 12, what does it show with respect to the total number of hours, man hours, on job order 678 and 680?

A. It shows a total of 9487.6 hours.

Q. Does the exhibit show the total amount of stores issued on Job Order 678 and 680?

A. Yes, it does.

(Testimony of Frederick J. Harper.)

Q. What is the total of that amount?

A. Stores material, \$2547.01.

Q. When you mention stores, you mean direct issues from warehouse stock of Commercial Ship Repair?

A. Yes, sir.

Q. Does your record show the total cost price of direct purchases furnished to Job Orders 678 and 680? [186]

A. Yes.

Q. What is the total of that?

A. It shows \$8536.62.

Q. Are there additional items of material shown by your record that went into Job Order 678 and 680, exclusive of what you have already testified to?

A. Yes. There were two sets of coils for the Clayton boiler which are not included in these costs.

Q. What is the reason for that?

A. The coils were contractor material, own material. They were not on our cost records. They were furnished to the vessel and have a value.

The Court: By whom were the coils furnished to the vessel.

The Witness: By the contractor.

The Court: Who is that?

The Witness: Commercial Ship Repair.

Q. State if you know what was the reasonable market value of the coils furnished to which you have testified in October, 1948?

A. The cost to Commercial Ship Repair would be approximately 12——

Mr. Howard: Just a minute. That is not responsive.

(Testimony of Frederick J. Harper.)

The Court: Sustained. It is a question of what the answer to the question was and is as of the date when the work was being done.

The Witness: Approximately \$1250 each.

The Court: Each coil?

The Witness: Each coil.

The Court: Give the figure for the two of them.

The Witness: Approximately \$2500.

Q. Two sets of coils were furnished?

A. I understand two sets of coils were furnished.

Q. Does your record show that? A. No.

Mr. Howard: The records speak for themselves.

The Court: The answer was no. The objection is overruled.

Q. Why do your records not show that?

A. My cost records do not show it. The invoices show it. The records, I presume, do show it.

Q. Because the coils were not purchased outside but were owned by Commercial Ship Repair, is that correct? A. That is correct.

Q. What price was charged for the two sets of coils to the Urania on Job Order 678?

A. The one set was furnished as a spare coil, and it was charged at \$900. The other set was, as I understand, installed in the boiler and would be included in the billing [188] for the construction or repair of the boiler, whatever was done to it.

Q. And the price of the two sets of coils then is not included in the total amount that you have stated represents the direct purchases for the vessel on Job Orders 678 and 680?

(Testimony of Frederick J. Harper.)

A. It is not included.

The Court: Can you look at any exhibit now in evidence and see there any mention of these two sets of coils for the boiler?

The Witness: Yes.

The Court: Which one?

The Witness: On Libelants' Exhibit 6.

The Court: Why do you say these are extras not otherwise charged for?

The Witness: I mean they are not included in our cost figures which I have been giving you. They are included in the billing to the Motor Tanker Urania.

Q. Referring to Libelants' Exhibit 6, does it show one set of coils you have referred to?

A. Yes, it does.

Q. On what page?

A. It is on the last page, on page 5.

Q. What price is assigned? A. \$900.

Q. Turning to Libelants' Exhibit 4, you have it before you, Job Order 678? A. Yes, I have it.

Q. Referring to item 14 listed thereon, is reference made to a set of heating coils in that item?

A. Yes, item 14, "furnish and install new heating coils."

The Court: That is in Exhibit 4?

The Witness: Yes, sir.

Q. Does your analysis show what the total billing was on both the main contract and the extras?

A. Yes. The total billing to Motor Tanker Urania was \$86,766.46.

(Testimony of Frederick J. Harper.)

Q. Does your record show what the total profit to Commercial Ship Repair on that is?

A. It reflects a profit——

Mr. Howard: I object to that as immaterial, what the profit is.

The Court: What is your answer, if any, to the objection?

Mr. Hokanson: The answer is, Your Honor, that certainly there is some relationship between profit and the reasonableness of the charge. In view of the extensive records involved here and to shorten the evidence as much as possible, I would think testimony [190] as to profit would certainly be relevant as bearing upon the question of reasonableness without going into each item in detail.

Mr. Howard: There are other factors, if the Court please, that would enter into determination of profits, such as overhead, which this witness has not yet testified on.

The Court: The objection is overruled.

Read the question.

(Last question read by reporter.)

The Court: The answer should be yes or no.

The Witness: Yes.

The Court: Do you wish to ask another question, so that an objection may properly be stated?

Q. What is the amount of the profit?

Mr. Howard: I object to that in that the question is not specific, as to whether he is referring to the entire job or to the work under the extra items

(Testimony of Frederick J. Harper.)

covered by Exhibit 4 and the spares that come under Exhibit 6.

The Court: The objection is sustained. You may ask a clarifying question or questions.

Q. I have reference to the entire job. Does your record show what the profit is for main contract, extras and spare parts?

Mr. Howard: I object to that question relating to [191] the entire job. We have already had a stipulation as to the reasonableness on the contract work, the work totalling \$41,655. Our inquiries here should relate to the extra work and the spare parts.

The Court: That is sustained. Confine your answer to the extras and the items over and above the original contract work.

Q. Does your record show what the profit is with respect to the extra work and the spare parts?

A. Yes.

Q. What is the amount thereof?

A. It shows a profit of \$5987.68.

The Court: At this point we will take a noon recess until 1:30 this afternoon.

(At 12:01 o'clock p. m., Friday, April 8, 1949, proceedings recessed until 1:30 o'clock, p. m., Friday, April 8, 1949.)

April 8, 1949, 1:30 o'clock p. m.

Mr. Hokanson: Before resuming the interrogation of this witness, I should like to say on behalf of

(Testimony of Frederick J. Harper.)

libelants that there are certain foremen who have knowledge of the work done on the *Urania* who are presently engaged in important work at Winslow. Your Honor has expressed a desire to have it established in this proceeding what the competency and qualifications are of the personnel of Commercial Ship Repair to do this kind of work.

We are most anxious to satisfy the Court in that matter, but in the interest of expediting the trial, we propose to omit putting on in our case in chief these various people with the thought that perhaps on the cross libelant's case occasion will be had to put these persons on the witness stand and to develop from them what their qualifications are.

If the Court has any feeling one way or the other as to whether we have adequately established up to this point the competency of our personnel, counsel would be appreciative of an expression from the Court at this time so that we may make further arrangements [193] for testimony before resting.

The Court: I assure counsel that what the Court has said is not reflecting the Court's desire. It is merely to give counsel on both sides an opportunity to know of the Court's attitude as to one of the issues respecting the need of proof. If you feel content to submit the matter on that issue to the Court upon the present evidence, that is entirely within your discretion and the Court will not interfere with that.

All that I have said was to try to give both sides

(Testimony of Frederick J. Harper.)

notice of the fact that I consider that one of the material issues, and I thought the time I mentioned it was an appropriate time to go into it with the testimony. That was all I meant to indicate.

Mr. Hokanson: Thank you, Your Honor.

Q. From your experience as chief accountant at the Winslow yard, can you state how the profits shown on the extra work in this case compare to the profit on comparable jobs in comparable types of vessel at the Winslow yard?

A. I would say it compares very—it is a comparable profit. If anything, it is a very reasonable profit.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard: [194]

Q. Referring to this Exhibit 12, do you have that in front of you? A. No, sir, I do not.

Q. Was that prepared at the time you computed the amounts shown on the invoice for extras, being a portion of Libelants' Exhibit 5?

A. No, sir. That was the invoice on the spare parts.

Q. On the extras?

A. Was this prepared at that time?

Q. Yes. A. No, sir.

Q. When was Exhibit 12 prepared?

A. It was prepared during the last four or five days.

Q. Do you have with you now the documents

(Testimony of Frederick J. Harper.)

showing a breakdown of labor and material that was used in computing the charges for extra work shown in Libelants' Exhibit 5.

A. Any documents at that time—I don't recall that there were any. There probably were some working papers, weren't necessarily used in computing the prices on this invoice. The prices were negotiated.

Q. I will ask a question about that. Referring now to Libelants' Exhibit 4, will you tell us how the prices shown on that exhibit were determined, if you know?

A. They were determined by negotiation between the yard manager and Mr. Williams. [195]

Q. Referring now to item 1 on Libelants' Exhibit 4, the sum of \$6704, does that in any way reflect the number of hours of labor or the quantity of material that was put into the ship under the work shown under item 1?

A. May I explain that the items one to three, etc., in the original work orders do not agree with items 1, 2, 3 and 4 here in numbering.

Q. I understand.

A. Item 1 of the original work orders, I don't recall what it called for.

Q. I will endeavor to restate it. My question was whether the amount of \$6704 shown under item 1 in Libelants' Exhibit 4 truly reflects the value of the labor and materials shown as having been furnished under that item in the various elements of it as appearing on the first page of Exhibit 4?

(Testimony of Frederick J. Harper.)

A. Not knowing what items of labor and material went into this item 1, I cannot answer you.

Q. How did you compute that \$6704?

A. I did not compute it.

Q. And that is true of the rest of the items in this exhibit? A. That is true.

Q. You didn't compute the amounts?

A. No. [196]

Q. Referring back again to Libelants' Exhibit 12, you have shown in that exhibit various amounts for overhead chargeable to particular items of the account. Will you tell me first how the total amount of the overhead for the Winslow yard of Commercial Ship Repair is determined?

A. It is determined by the amount of your payroll taxes, insurance, administrative expense, warehouse expense, and many other individual items that go to make up your total overhead.

Q. Do you know what your total monthly overhead was as carried in your books for the months of August, September or October 1948?

A. Yes.

Q. Will you please state what that figure was?

A. I do not know, offhand. I can determine what it is.

Q. Can you determine it presently, or——

A. No, I cannot.

Q. How long would it take you to get that figure?

A. I would have to look at the records to find out. They are at Winslow.

(Testimony of Frederick J. Harper.)

Q. As to the amounts shown as charged to overhead in particular items in Libelants' Exhibit 12, how are those amounts determined?

A. How is the amount of overhead that is distributed [197] to these jobs determined?

Q. Yes.

A. That is determined by taking our total overhead for the fiscal year during which this work was performed, dividing that total overhead by the number of direct labor hours during the year in which this work was performed, and arriving at a constant hourly overhead figure. That is then multiplied by the number of direct labor hours on this individual job, and on this individual job and all the others you allocate your overhead cost to your direct labor.

Q. Is it possible to determine what your monthly over-all overhead figure is for the year?

A. Not absolutely accurately. Some of your items lap over into other months. The only way to distribute your overhead is on a yearly basis.

Q. Having done that, you can break it down into months, can you not?

A. You can break it down into the jobs that were performed during those months by allocating it through direct labor.

Q. Suppose that you have only one ship in the yard over a period of a month. How much of your monthly overhead expense would be charged to that ship?

A. It would take its pro-ration of the total yearly

(Testimony of Frederick J. Harper.)

overhead cost. If you had one ship during that month and [198] and you had 150 ships during the year and they all had the same number of hours on them, it would take the same as the other 149.

Q. Can you state what your experience has been as to what percentage of the total cost on a job is represented by the overhead charged to that job?

A. Percentage-wise, it is a little bit hard for me to tell you. I can tell you that overhead costs run anywhere from \$1.00 to \$1.65. I have seen as high as \$1.90 a direct labor hour.

Q. Can you give us any estimate on a percentage basis?

A. Not without doing some computation and figuring it out.

Q. In that overhead figure, how much salary of supervisory personnel is included?

A. Any salary of superintendents is included in your overhead costs. Salaries of foremen are a direct charge against the job on which they work.

Mr. Hokanson: I take it that the record will show that my objection registered before putting on Mr. Harper as my own witness goes to all the cross-examination as well?

The Court: Is there any objection to that arrangement?

Mr. Howard: No, Your Honor. I understand that is [199] continuing the objection.

The Court: The Court approves that arrangement and declares it effective.

(Testimony of Frederick J. Harper.)

Q. Is the overhead figure which you have used in computing Libelants' Exhibit 12 determined on the fiscal year involving the months August, September and October 1948? A. Yes, they are.

Q. What is your fiscal year at the yard?

A. It ends January 31.

Q. I note in your Exhibit 12 under the sheet dealing with extra labor, Job Order 678, an item of labor 9487.6 hours at a cost of that labor of \$17,062.15. Can you state for us how the cost of that labor is computed? Is it on a certain fixed price, or does it vary as to——

A. The cost of that labor is computed in actual dollars and cents paid out to the men who performed those hours, who worked during those hours.

Q. I note also on Exhibit 12, under the same sheet dealing with extra labor, Job Order 678, an item of direct purchases in the amount of \$8536.62. Can you state for us whether that includes the cost of spare parts furnished to the vessel and included under the separate invoice which has been offered and admitted as Libelants' Exhibit 6?

A. Yes, it does include the cost of spare parts.

Q. And those spare parts, according to Libelants' [200] Exhibit 6, were charged at the price of \$6291.33?

A. May I amend my previous statement? It includes the cost of spare parts other than the Clayton spare coils.

Q. I note that the item of overhead under

(Testimony of Frederick J. Harper.)

Exhibit 12 on the sheet dealing with extra labor, Job Order 678, is in the amount of \$10,978. Do you find that figure? A. Yes, sir.

Q. And for the same work, that is the extra labor, the extra work on the vessel, the labor charge was \$17,062.15, is that correct?

A. Yes, sir, that is correct.

Q. Isn't that an unusually high amount of overhead to charge to a job of that size?

A. No, sir.

Q. Do you mean to say that on all of the work handled by your yard during this period a proportionate amount of overhead would be charged for the labor that is performed?

A. Exactly on the same basis that this overhead was distributed.

Q. Can you state for us what the ratio is between your labor cost and your overhead charge?

Mr. Hokanson: If the Court please, I think that is a matter of judicial notice on the figures stated.

The Court: The objection is overruled.

The Witness: May I hear the question again?

(Last question read by reporter.)

A. Do you mean the percentage ratio?

Q. Yes.

A. It cannot be accurately determined on your labor cost. It can be determined on your labor hours. Your labor cost varies. One man gets \$1.60 an hour, some other man belongs to another craft and has a higher rate, \$1.75 or \$1.80, but if that man

(Testimony of Frederick J. Harper.)

works an hour, a certain ratio of overhead is allocated to that hour's work.

Q. You stated that you consider the profit as reflected in Libelants' Exhibit 12 being reasonable according to your experience on other jobs. Will you state for us what if any limitation is placed on the amount of overhead that may be charged on similar work performed for any agency of the United States Government?

A. There is no limitation on the amount of overhead, as long as it is actually incurred and is necessary for the operation of the company. During the war, overhead varied. It was even as high as \$1.90 an hour, and it was allowable on Government work.

Q. As I understand, you had no document corresponding to Libelants' Exhibit 12 available for reference at the time you computed the figures shown on Libelants' Exhibits 4 and 5?

A. I did not have Libelants' Exhibit 12 [202]

Q. Did you have any similar or corresponding document?

A. We make a tentative breakdown as costs of our job as they actually run. It wouldn't be accurate, of necessity. The accounting follows the work. Costs that are incurred aren't all available, haven't been computed at the time that the work is completed.

Q. Have you ever furnished any such a document as Exhibit 12 to anyone representing the owners of the respondent vessel since the job was completed?

(Testimony of Frederick J. Harper.)

Mr. Hokanson: I object to that on the same grounds that all my previous objections have been made, and further that there is no showing here that any demand was ever made, or was there a necessity of making such a breakdown.

The Court: The objection is overruled.

A. No, I don't believe so.

Q. Then the number of hours of labor that went into these various items had not been determined finally at the time these invoices were prepared?

A. Not finally determined. We knew approximately the number of hours, but it hadn't been determined in the exact amount of hours that are on here.

Q. Did you preserve any computation that you made at that time as to the number of hours of labor that went into [203] these various items?

A. No, sir.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. The time cards which are identified as Libellants' Exhibit 9, are the records of the time on both the main contract and the extra work done on the *Urania*, are they not? A. Yes, sir.

Q. So that there has been a computation preserved of the time spent on repairs to the *Urania*?

A. That is true. It is not in the form of a recapitulation.

(Testimony of Frederick J. Harper.)

Q. Was any analysis such as Exhibit 12 ever requested of you by the owners of the Urania?

A. No, sir.

Q. Was one ever requested of you by Mr. Williams? A. No, sir.

Q. And is it customary in a negotiated price job to furnish such a breakdown? A. No.

Q. In your overhead item, what is the overhead per hour in the case of the Urania job?

A. In the case of all work performed, including the [204] Urania job, during the fiscal year of 1948, the rate per hour is \$1.15.7.

Q. How does that compare with the hourly overhead rate that obtained during the war years?

A. It compares very favorably; in fact, as I have stated before, during the war years at times your overhead was as high as \$1.90 an hour, approximately. I don't remember the exact figures.

Q. In computing your cost on all jobs, do you use the same system of overhead computation as you have in making up the analysis that is identified as Exhibit 12? A. Yes.

Q. Is that the customary way of doing it in shipyards?

A. It is customary at the end of the year to allocate your overhead to the jobs, yes. At the time that you compute a job, you don't know exactly what the overhead is: You can't allocate it at that time.

Mr. Hokanson: No further questions.

(Testimony of Frederick J. Harper.)

Recross-Examination

By Mr. Howard:

Q. Then the figure that you arrive at at the end of the job is just a guess as to how much overhead should be put into that figure?

A. You have a tentative idea from your past experience, [205] but it is not accurate.

Q. And these time cards in Exhibit 9 not only relate to the contract work and the extra work, but also have a record of time spent on other jobs entirely unrelated to the Urania?

A. Yes, they do.

Q. There is nothing in Exhibit 9 that segregates the time spent on the Urania, either on the contract or extra work, from the time spent on the entirely unrelated ones?

A. The time cards themselves show on which job order the work was performed.

Q. I am speaking of other than the individual time cards. There is nothing else in Exhibit 9 that attempts to segregate time on the Urania extra and contract work from entirely unrelated jobs?

A. It is segregated on the time card itself.

Q. Just on each individual time card?

A. Yes, sir.

Mr. Howard: I have no further questions.

Mr. Hokanson: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Sweetin. [206]